

April 21, 2009

Heloise Torquato
4919 Coke Avenue
Lakewood, CA 90712
562-634-2622
RE: Claim for damages #C09-0043

Honorable Council Members,

Thank you for the opportunity to bring my concerns to your attention today.

The issue today is:

A claim against the city for damages caused by a city tree

The claim was rejected based on "operation of law" further defined as "timeliness"

A partial settlement offer of 70% of the actual damages

A need for assistance in getting questions answered.

Briefly, in June of 2007, I was in the process of settling the family estate. I noticed the driveway and garage were uplifted and broken. I called the city about the city tree.

In September of 2007, the City Arborist came out and assessed the issue and told me I had to have proof. He told me I had to take the concrete up and get proof that the City tree caused the damage and then to file a claim.

By December of 2008 the pressing matters of the Estate had been concluded, I had acquired the funding for the rehabilitation of the real estate, prepared a budget and was getting bids from contractors.

The concrete work began on January 12, 2009 and concluded on January 21.

Extensive tree roots were found under the driveway, garage floor and city sidewalk. The roots were from City trees. The roots were photographed and removed and the concrete was replaced.

At no time, along the way of this process, was I given the information about a timeliness issue.

I filled a claim against the City for damages on January 22, 2009.

On March 11, 2009 the claim was rejected by the City Attorneys office due to lack of timeliness.

I have been in contact with the City Attorney's office trying to settle this claim but there are unanswered questions in relation to the settlement I would like to get answered.

When one such as me, a property owner, has to have proof of damages, but the proof requires expensive demolition and repair work to be performed by a licensed contractor, it may take some time to obtain the funding for the project if ever. In my case I wasn't even ever told of a time line. There needs to be some kind of accommodation for citizens who do not have the money to discover the cause of their damages. They need relief of the timeliness issue to order to obtain the money to fund the work. In this regard, I hope that the Council will make a policy decision.

In the copies I have given you tonight, I have included further explanation of the issues. I have tried to be brief with my presentation this evening. Thank you.

STATEMENT IN FULL WITH ADDITIONAL DETAIL

In June of 2007, while handling the family estate at 124 E 51st, I noticed that the driveway and garage floor were uplifted and cracked and that the 58 year old City bottle tree had overgrown the house roof and was depositing pods and debris in the rain gutter. I immediately called the city tree department and after many contacts, in September of 2007, I was told by the Jerry Rowland, the city arborist, that he could not determine what caused the damage to the driveway and garage floor. He told me that I could take the driveway up and if I found tree roots to take pictures of them and to submit the pictures with a claim to the City of Long Beach and the City would have to pay for the damages.

I January of this year, I did that. However, what was never mentioned to me by Mr. Rowland or his boss, Art Cox, or his boss Mark Christoffels, or his superior Del Davis, or my city council woman, Rae Gabelich, all to whom I spoke, was that there was a time limit for taking up the concrete and the City Attorney's office would reject my claim on the grounds that I did not demolish the driveway in an effort to find tree roots, and submit the claim within one year of July 2007.

When I was able to fund the demolition and make the repairs, I did take up the concrete and there was a system of city tree roots under the driveway, the garage and the city sidewalk, actually coming from two city trees. The labyrinth of roots were the cause of the damage to the concrete slabs. As instructed, I took pictures of the roots and immediately submitted a claim to the City.

The city claim form itself does not mention a time limit in the same language that the District Attorney's office relied on to originally reject my claim. The claim form states that I had 1 year from the Occurrence of the Damage. The City Attorneys office states that I had one year from the Accrual of Action. It seems to me that the ambiguity in the language and the lack of disclosure of complete instructions provided by city staff leaves the citizen in a compromised position in claims matters.

My communications with the City Attorney's office have been adversarial at best. Monte Machit, Principal Deputy City Attorney, has offered me a settlement of 70%

of the repair cost. I would like to know the basis of the 70% offer. I would like a response on the issue of waiver of timeliness by the City Attorney's office [California Code, Title 1, Division 3.6, Part 3, Chapter 2, Article 1, Section 911.3 (b:)]

I am appealing to the City Council today for assistance in moving this matter forward. Time is of the essence as the City Attorney has informed me of a new 6 month deadline.









EXPANDED TIME LINE FOR CLAIM #C09-0043 Three pages total

6/25/2007 Talked to **Lisa** and **Rose** 5702726 want tree removed,

6/27 received post card 10-30 days to inspect tree

7/2 door notice removal denied 5702733

7/3 called for supervisor 5702731

7/5 **Jerry Rowland** sent someone else, will go out personally and call me back

7/14 branch dropped

7/16 he will go out today and call me, sure.

7/16 **Mark Christoffels** 5706771 regarding tree removal, appeal in writing to city engineer, city tree committee meet quarterly next meeting in October, file a claim for damages done to the property

7/16 1st email to **Art Cox**

7/23 2nd email to **Art Cox**

7/30 follow-up phone call to Art Cox, he's out until 8/7, talked to **Yolanda**, she to give message to Art Cox next Tuesday for appointment and follow up.

8/31 3rd follow-up email

9/4 Talked to **Yolanda**, she did not remember 51st St tree issue. Spoke to **Art Cox** he said he went out and looked at tree and it is scheduled for trimming, told him tree needed to be removed, he promised to take another look and call me tomorrow.

9/11 **Jerry Rowland** came out and we met and discussed the tree and the uplift and cracks in the concrete.

9/13 **Jerry Rowland** called, had meeting with his department, they will reduce the crown within two weeks, I had to take the driveway out and find roots, and take pictures and submit a claim and then they would remove the tree and take responsibility for the driveway repair.

9/13 talked to **Laura** Rae Gabelich office

9/19 talked to **Jonathan**, Laura will call me back

9/21 **Laura** gave Veronica in field office the information will call Ken Mason and call me back

9/23 Photographs of problem trees on 51st Street.

9/24 **Laura** talked to Lou Prather he's to review and get back to me service request #160483

9/25 Meeting with **Rae Gabelich** at the 51st Street property. Discussed the tree, sidewalk, gutter, street drainage and pothole problems.

9/25 Sent letter to neighbors at 125, 184, 172, 211, 240, 200, 244, 274, 245, 167, 150, and 175 E 51st St regarding destructive, dirty, overgrown trees damaging sidewalks and gutters. Stating I was taken aback at suggestion to remove my cracked and uplifted driveway in order to find roots and submit proof that the tree had damaged my driveway and then they would remove the tree. Suggestion did not seem reasonable. The removal of the tree ... would certainly cost thousands of dollars. Then the repair to my apron and driveway would be another several thousand dollars. I really need the city to be more helpful in this matter. High financial burden. We need to know when our time will come for tree problems.

10/16/07 Tree crew out to reduce crown on both trees at 124 E 51st St.

10/28/2007 New very large limb drop down the street, hit the house and damaged the tile roof. Took pictures.

From 10/20/2007 to 12/31/2008 I put in excess of 1002.77 hours working on Estate matters in addition to my other normal duties.
I tracked all of my time at my sisters request.

December 2008 I began the process to rehabilitate the real property. I had accumulated the necessary funding and I had a budget. I began contacting vendors.

Called Planning 570-6194, Building 570-6651, Public Works 570-6383, found out permit to widen approach must be preceded by approval of the project.

Referral to city approved contractors: Advance 562-866-1136, No Best 714-892-5583, TNF Contractors 562-234-0634.

1/1/2009 email to Jeff Winklepleck for permit to expand approach to driveway pad.
Again mention having the tree removed to halt tree root damage to new construction.

1/7/2009 Reply from Jeff Winklepleck, including attached form "ARBORIST INSPECTION REQUEST TO REMOVE STREET TREE(S). Noted requirement to have "written documentation from a licensed contractor indicating the City tree roots are responsible for the damage."

No Best, who is a contractor with the city and does street and sidewalk repair. Schedule not available as to when 51st Street will come up for street and sidewalk repairs. Did find out that the prevailing cost to remove and replace concrete is \$10.00 per square foot.
1/7/2009 Quote from Advance Concrete.

1/9/2009 Quote from TNF Contractors

1/12/2009 Began concrete demolition.

1/21/2009 Concrete work completed

1/22/2009 Submitted claim to the city for damages in the amount of \$5,700.00. The actual cost for the driveway, garage floor and city sidewalk repair.

2/17/2009 Letter from Office of the City Attorney acknowledging receipt of the claim. Stating the claim would be deemed rejected if no action is taken within 45 days of filing.

3/12/2009 received letter, "rejection by operation of law" New 6 month time limit for court action. Letter dated 3/10/2009, letter posted 3/11/2009. Letter late, more than 45 days from date of claim.

3/12/2009 call to Monte Machit, explained language referred to timeliness.

3/27/2009 received email from Monte Machit formalizing settlement offer.

4/6/2009 emailed Monte Machit requested more information and counter offer.

4/21/2009 proceeded to present this matter before the City Council.