

THURSDAY, DECEMBER 29, 2016

SF attorney sues city to enforce urban forest laws

'The urban forest is a real necessity. Many kids don't see trees outside of Golden Gate Park.'

—Martin L. Fineman

By Phil Johnson
Daily Journal Staff Writer

Davis Wright Tremaine LLP associate Sanjay Nangia was encouraged to devote at least 50 hours a year to pro bono matters when he joined the firm in 2011. Little did he know, a case he picked up early in his tenure would last five years and require much more time than the minimum annual requirement.

The matter involved San Francisco's tree canopy, or lack thereof in the eyes of San Francisco Urban Forest Coalition Executive Director Allen Grossman. *SF Urban Forest Coalition v. City and County of San Francisco et al*, CPF-10- 510658 (Sup. Ct. S.F., filed Aug. 30, 2010).

A former attorney, Grossman learned the city was not enforcing its own ordinances requiring the planting of trees near certain construction sites. So Grossman sued the city's planning department, which is responsible for enforcement.

About a year and half after the suit was filed, the city said it would fix the situation with a checklist. A piece of paper would be delivered to each project undertaken in the city that triggered a tree planting requirement.

While local government spoke highly of the checklist, Nangia sought proof of its effectiveness. Unfortunately, he found approximately half of all projects that should have submitted a checklist to the city had not done so.

Nangia saw this shortcoming as reason to do more. The city saw otherwise.

In court, Deputy City Attorney Robb Kapla argued the city could not retroactively enforce tree requirements on projects that were once believed acceptable.

"I believe the sticking issue here is the interpretation that whether or not under petitioner's interpretation of the law not only must we go back to check and see if applicants actually planted the trees that we required of them, but we now ask that they plant the extra trees that will be required under petitioner interpretation," Kapla said, according to a court transcript.

There were more hurdles for Nangia.

"They said enforcement was discretionary and requested the court dismiss the case," Nangia said. "They also said the statute of limitations on certain areas of enforcement had passed."



Phil Johnson / Daily Journal

Davis Wright Tremaine LLP associate Sanjay Nangia, below right, stands below trees and the Transamerica Pyramid in San Francisco.

Nangia countered by saying the suit was not only about specific projects but overall enforcement of a policy. The city's motion to dismiss the lawsuit was denied.

As he continued to dig, Nangia found evidence suggesting the city did not take its enforcement duties seriously. For example, in a PowerPoint presentation on the checklist procedure, a city employee sarcastically noted "the irony of chopping down trees to save trees." While the statement was likely meant to protest the printing of paper checklists to ensure the planting of trees, Nangia saw a valuable piece of evidence. Presented in court, the statement caught the attention of San Francisco County Superior Court Judge Ernest H. Goldsmith, who has since retired.

"I've got the impression the official involved went into this kicking and screaming," Goldsmith said. "It is absurd what he said."

With a nudge from Goldsmith, the city sought

a settlement with Nangia.

The agreement calls for the city to enforce its policy and establish a publically accessible database where residents can search neighborhood activity involving tree requirements. The city is also required to review 720 issued permits to verify that tree planting requirements were satisfied.

"Sanjay did a wonderful job on this," said Martin L. Fineman, a partner with Davis Wright Tremaine LLP who oversaw Nangia's work on the matter. "The urban forest is a real necessity. Many kids don't see trees outside of Golden Gate Park."

Grossman, who said the city would have as many as 50,000 more trees if the city enforced its own rules, praised Nangia's commitment.

"I think he was the third or fourth associate to work on the case," Grossman said. "He was thorough, consistent and maintained a great disposition."