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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

TOWER LANE PROPERTIES, INC., Plaintiff and Appellant, v. CITY OF LOS ANGELES, Defendant and Respondent; BRUCE KARSH, et al., Interveners and Respondents.	B275357 (Los Angeles County Super. Ct. No. BS151476)

APPEAL from a judgment of the Superior Court of Los Angeles County. James C. Chalfant, Judge. Affirmed.

Jeffer Mangels Butler & Mitchell, Robert E. Mangels, Benjamin M. Reznik and Matthew D. Hinks for Plaintiff and Appellant.

Michael N. Feuer, City Attorney, Terry Kaufmann Macias, Assistant City Attorney, and K. Lucy Atwood, Deputy City Attorney for Defendant and Respondent.

Latham & Watkins, James L. Arnone, Benjamin J. Hanelin and Jennifer K. Roy, for Intervenors and Respondents.

Tower Lane Properties, Inc. (Tower) sought building and grading permits from the City of Los Angeles (the City) for construction of a three-residence family compound over three contiguous lots in Benedict Canyon, a neighborhood on the Westside. The City's planning department denied the permits, in part because one lot had no lawful street access. Tower then obtained City approval of a "community driveway" connecting that lot with a private street, but the City still refused to clear the access condition because the private street itself was not approved. Tower instituted these writ proceedings, contending the City owed a ministerial duty to clear the street access condition because the driveway connected the landlocked lot with the private street. The trial court denied the petition, finding Tower's driveway failed to provide lawful access because the private street from which it originated was not approved.

We affirm. To provide lawful access, a community driveway must connect to an approved street. Because the street to which Tower's driveway connects was never approved, the property has no lawful access.

Background

A. History of the Property

Tower Lane was a private street approved in 1966 and designated in city records as "Private Street Number 275B," or "PS 275-B." The property at issue comprises three contiguous

lots on approximately five and a half acres in Benedict Canyon. From roughly south to north, the lots bear the addresses 9933, 9937, and 9941 West Tower Lane. We will refer to them collectively as "the property" and individually as 9933, 9937, and 9941.

PS 275-B ran north from Tower Road, a public street. Upon reaching the property, it fronted lot 9933 for a bit, then terminated at a driveway into the lot. The driveway proceeded north through 9933, then entered and twice traversed 9937, climbing in elevation and doglegging twice, then entered lot 9941 and ended at a residence. The driveway thus had three basic legs that formed a sideways S: (1) The first stretch running north from Tower Lane—the base of the S; (2) a second stretch comprising the first dogleg, plus a length going south, plus a second dogleg; and (3) the final stretch going north to a residence—the top of the S. Lot 9933 thus fronted on PS 275-B both laterally and at the base of the driveway, while lots 9937 and 9941 had no access to any street.

In 1998, to comply with regulations requiring that all lots front an approved street for at least 20 feet, the then-owner of the property adjusted the boundaries of lots 9933, 9937 and 9941 so that each would have the required frontage on PS 275-B. The owner lowered the boundary of 9941 so that 9937 now had 20 feet of lateral frontage on PS 275-B, and by shifting the boundary of 9941 so that it engulfed the first leg of the driveway. Because PS 275-B was approximately 20 feet wide, its termination point at the base of the driveway, now part of 9941, provided 20 feet of tip-to-tip frontage for that lot.

The lot line adjustment reduced the area of lot 9937 from 115,000 to 73,000 square feet, expanded lot 9941 from 39,000 to

80,000 square feet, and transferred the first leg of the driveway from 9937 to 9941. The adjustment made no physical change to either the driveway or PS 275-B.

To address the burden that property development places on private streets, Los Angeles Municipal Code (LAMC) section 18.03 provides that "No person shall plat or divide land as lots or building sites which are contiguous or adjacent to a private road easement and no person shall be granted a building permit for such a lot or building site unless a Private Street Map has been first filed with and approved by the" planning department. (LAMC, § 18.03, subd. (a).) The planning department must receive input from other departments before approving a private street map. (LAMC, § 18.03, subd. (c).)

In October 1998, the City determined that the 1998 lot line adjustment and PS 275-B-Mod would have no significant effect upon the environment, and were thus exempt from compliance with California Environmental Quality Act (CEQA) guidelines. The City conditionally approved the adjustment subject to improvement of PS 275-B.

The owner then sought a private street map modification for PS 275-B, designated as "PS 275-B-Mod."

In February 2000, the Planning department approved PS 275-B-Mod for lot division purposes, but advised the owner that building permits would not issue until 16 conditions were met concerning improvements to PS 275-B-Mod. The conditional approval stated, "The Deputy to the Director of Planning will advise the Department of Building and Safety that the necessary permits may be issued pursuant to this approval following receipt of satisfactory evidence of compliance with [16] conditions."

Condition No. 12 of the 16 stated: "No dead-ending street or fire lane shall be greater than 700 feet in length or secondary access shall be required."

The City informed the owner and public that any appeal of PS 275-B-Mod must be filed within 90 days. Neighbors appealed PS 275-B-Mod but the owner did not. In November 2000, the City's Board of Zoning Appeals denied the neighbors' appeal and approved PS 275-B-Mod subject to the 16 conditions previously imposed.

In 2000 and 2002 the City issued limited certificates of compliance for the 1998 lot line adjustment. The 2002 certificate stated, "The purpose of filing this Certificate of Compliance is to verify that all necessary deeds to adjust the boundaries of the subject parcel have been approved and recorded . . . . [¶] This certificate relates only to issues of compliance or noncompliance with the Subdivision Map Act and local ordinances enacted pursuant thereto. The parcel described herein may be sold, leased, or financed without further compliance with the Subdivision Map Act or any local ordinance enacted pursuant thereto. Development of the parcel may require issuance of a permit or permits, or other grant or grants of approval."

In 2005 and 2006, the owner demolished the residence on lot 9941, carried out some grading on the site, installed a long retaining wall, and constructed a large underground parking facility on lot 9941, atop which a new residence could be constructed.

However, the owner never satisfied the conditions imposed in 2000 on PS 275-B-Mod, at least one of which—secondary access—remains unsatisfied to this day.

B. Tower Sought Additional Grading and Building Permits

Tower purchased the property in 2009. Two years later, it submitted project plans and applications for grading and building permits for 35,452 square feet of residential construction, including single-family dwellings on each of the three lots; several retaining walls, water features, and ancillary buildings; and removal of 969 cubic yards of earth.

During the review process, City departments cleared most of the conditions for the permits Tower sought but in July 2012 the planning department informed Tower it would not certify PS 275-B-Mod or issue building permits unless Tower's plans addressed the 16 conditions imposed in 2000.

Tower petitioned the superior court for a traditional writ of mandate compelling the City to clear the conditions imposed on PS 275-B-Mod in 2000. It argued it had either fulfilled the conditions or obtained waivers from the Los Angeles Fire Department, which the planning department was obligated to accept. The court sustained the City's demurrer without leave to amend and dismissed the petition on the ground that PS 275-B-Mod could be certified only by the planning department, not the fire department. We affirmed. We held that the LAMC proscribed issuance of a building permit for construction on property served by a private street that had not been approved. The City was not obliged to approve PS 275-B-Mod because at least one condition imposed in 2000—Condition No. 12—had not been satisfied, modified or waived. We noted that although LAMC section 18.12 sets forth a procedure by which Tower could seek to have such a condition modified or waived, it refused to

avail itself of the procedure. (*Tower Lane Props. v. City of Los Angeles* (Feb. 13, 2015, B251742) [nonpub. opn.].)

After judgment in that mandamus action but before our ruling on appeal, Tower applied to the City for approval of its driveway as a "community driveway," a species of a private street. The City approved the community driveway on May 6, 2014.

Tower then requested that the City accept its community driveway as satisfaction of access requirements to lot 9941, and issue building permits. The City refused to accept the driveway for this purpose because the only street to which it connected, PS 275-B-Mod, had still not been approved.

C. Writ Proceedings

On October 3, 2014, Tower instituted these writ proceedings, seeking a traditional writ of mandate compelling the City to certify the community driveway as sufficient access to lot 9941. Tower also sought an order compelling the City to issue all grading and building permits, but it now acknowledges that because other requirements remain outstanding the permits cannot immediately issue even if the driveway is certified. The City opposed the petition, and Bruce and Martha Karsh, residents of Benedict Canyon, intervened in opposition.

After a hearing, the trial court entered judgment denying Tower's petition. The court found that Tower "does not have legal street frontage for lot 9941 without the 1998 lot-line adjustment. The lot-line adjustment required a modification of the Private Street because 9941 was not a permitted user of the Private Street. Tower['s] predecessor obtained the Private Street modification in PS-275-B-Mod, but that approval contained 16 conditions . . . . But PS-275-B-Mod's [conditions have] not been

satisfied . . . . And without an approved private street, 9941 does not have legal frontage."

Tower timely appealed.

Discussion

A. Standard of Review

A writ of mandate will issue "to compel the performance of an act which the law specifically enjoins, as a duty resulting from an office, trust, or station . . . ." (Code Civ. Proc., § 1085, subd. (a).) There are two essential requirements to obtain such a writ: (1) a clear, present and usually ministerial duty on the part of the respondent, and (2) a clear, present and beneficial right in the petitioner to the performance of that duty. (*Mission Hospital Regional Medical Center v. Shewry* (2008) 168 Cal.App.4th 460, 478-479.) "A ministerial act is an act that a public officer is required to perform in a prescribed manner in obedience to the mandate of legal authority and without regard to his [or her] own judgment or opinion concerning such act's propriety or impropriety, when a given state of facts exists." (*Rodriguez v. Solis* (1991) 1 Cal.App.4th 495, 501-502.) Mandamus will not lie to compel the exercise of discretion in a particular manner. (*Helena F. v. West Contra Costa Unified School District* (1996) 49 Cal.App.4th 1793, 1799.) "Discretion . . . is the power conferred on public functionaries to act officially according to the dictates of their own judgment." (*Rodriguez v. Solis*, at pp. 501-502.)

Whether a statute imposes a ministerial duty or an obligation to perform a discretionary function is a question of statutory interpretation that we review de novo. (*Guzman v. County of Monterey* (2009) 46 Cal.4th 887, 898.)

B. Tower's Project does not yet Conform with the LAMC

Tower contends the City owes a ministerial duty to remove any impediment occasioned by PS 275-B-Mod, which is no longer necessary, and certify its community driveway as lawful access to 9941.

1. *LAMC Requirements Remain Unsatisfied*

The LAMC enjoins the Building and Safety Department to issue building permits when a project conforms with the LAMC and other relevant codes and ordinances. (LAMC, § 91.106.4.1.)[1]

Article 8 of chapter I of the LAMC governs lots or building sites that are contiguous or adjacent to private streets. (LAMC, § 18.00 et seq.) Section 18.03 requires that before the issuance of any building permit for a building site on a private street, a private street map containing information about the street, the surrounding area, and any associated lots must be approved by the planning department. Section 18.10 states that "[n]o building permits shall be issued for the erection of buildings on lots or building sites which are contiguous or adjacent to private streets" unless a private street map has been "approved and written findings made as to the conditions of approval thereof," and the planning department has certified that "the conditions, if any, required by said written findings have been fulfilled in a satisfactory manner . . . ." (LAMC, § 18.10.)

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[1] LAMC section 91.106.4.1 provides in pertinent part: "When the department determines that the information on the application and plans is in conformance with this Code and other relevant codes and ordinances, the department shall issue a permit upon receipt of the total fees." LAMC section 91.105.5.4 identifies "the department" as the Department of Building and Safety.

The 1998 lot line adjustment added lot 9941 as a user of PS 275-B. To reflect the added user, LAMC section 18.03 required that PS 275-B be modified and approved. The City conditioned approval of PS-275-B-Mod on several improvements, including Condition No. 12, secondary access. PS 275-B-Mod has no secondary access, and thus has not yet been approved for building purposes. No permit may issue for construction on a lot served by an unapproved street. (LAMC, § 18.10.)

2. *Tower's Community Driveway did not Cure the Fault*

Tower contends its community driveway, which was approved pursuant to a 2001 variance, is itself a private street that provides lawful access to lot 9941 in lieu of any other approved private street. Therefore, it need not satisfy the conditions imposed on PS 275-B-Mod. We disagree.

In 2001, the Director of Planning issued General Variation 2001-1 to provide an expedited ministerial approval process for use of common driveway facilities. General Variation 2001-1 provides, in pertinent part: "[R]elating to the issuance of building permits for two existing lots, the Director hereby grants the following variation to permit common driveway facilities without further approval by the Director of Planning."

"When we interpret the meaning of statutes . . . . [w]e begin by examining the statutory language, giving the words their usual and ordinary meaning. If we find no ambiguity, we presume that the lawmakers meant what they said, and the plain meaning of the language governs." (*McAllister v. California Coastal Com.* (2008) 169 Cal.App.4th 912, 928.)

General Variation 2001-1 simply states that common driveway facilities require no separate permit. Nothing in its

language enables a community driveway to substitute for an approved street.

Tower argues that three statements taken from two City documents constitute evidence that a community driveway may supplant an approved private street. The City's "Zoning Code Manual" states that "Community driveways serve as access to the required off-street parking facilities without approval from the Director of Planning." The Zoning Code Manual also states that "each separate lot [on a community driveway must] be physically capable of providing its own access on-site from a public or approved private street (i.e., legal street frontage exists), *except no such separate on-site access need be provided when utilizing the variation*." (Italics added.) The City's "Clearance Handbook" states that no private street clearance is required for "[d]evelopments which utilize . . . General Variation 2001-1." From these snippets Tower argues that its community driveway obviates PS 275-B-Mod. The argument is without merit.

First, no extrinsic evidence is necessary or admissible to aid in the interpretation of General Variation 2001-1 because the variation is unambiguous. It states only that "common driveway facilities" are permissible "without further approval by the Director of Planning." The variance says nothing about private streets, private street approvals, or common driveways standing in for approved private streets. Extrinsic evidence may not create an ambiguity where none exists.

Second, nothing in the statements Tower adduces supports its point. The zoning manual states that a community driveway affords sufficient access "to . . . off-street parking," and separate "*physical*" "access *on-site* from a public or approved private

street" need not be provided. (Italics added.) This means only that no independent driveway (physical "on-site" access) in addition to a community driveway is required. The clearance handbook states that no private street clearance is required for "[d]evelopments which utilize . . . General Variation 2001-1," which means only that the community driveway itself requires no private street clearance. Neither document indicates that the private street to which an approved community driveway connects itself requires no approval.

Tower argues that a community driveway itself is a type of private street, as evidenced by the deposition testimony of David Weintraub, a zoning administrator in the City's planning department, who testified that a community driveway is "technically interpreted to be a private street variation."

But the snippets Tower takes from Weintraub, the zoning manual and the clearance handbook deal only with a community driveway's existence on-site and access to parking facilities. Tower's evidence is silent on the only pertinent issue here: whether Tower's driveway grants lawful access to the outside world as well as to lot 9941's parking.

We note that in context and taken as a whole, each of Tower's sources actually refutes its point. For example, in the next sentence in Weintraub's testimony he stated that an approved community driveway must connect to an approved street to provide legal access. And the Zoning Code Manual consistently states that a community driveway must connect to an approved street. Tower does not argue that the City has actually adopted or follows a policy permitting an approved community driveway to supplant an approved private street.

Tower argues its driveway does in fact connect to an approved street—to PS 275-B. The argument is without merit because PS 275-B no longer exists, as it was changed in 2000 to PS 275-B-Mod. Tower argues it no longer intends to pursue modification of PS 275-B, but the record is to the contrary. PS 275-B-Mod was necessitated by the 1998 lot line adjustment increasing to three the number of lots fronting on PS 275-B. As Tower does not propose to change the lot lines back, and three lots continue to front on the private street, PS 275-B-Mod of necessity still exists and Tower still intends to use it.

By seeking to preserve the property's post-1998 lot lines but ignore PS 275-B-Mod, Tower in essence seeks to revisit the 1998 lot line adjustment and remove any conditions. But time for appeal of the 1998 adjustment has long passed. Although Tower may now accomplish its goal by requesting modification of the conditions pursuant to LAMC section 18.12, to date it refuses to do so.

C. Conclusion

Mandate will lie to compel the performance only of an act the law specifically enjoins. The LAMC precludes issuance of building permits when a project does not conform with applicable requirements. LAMC sections 18.03 and 18.10 require approval of off-site private streets before building permits may issue. General Variation 2001-1 did not change this requirement, and Tower has not complied with it.

Disposition

The judgment is affirmed. Respondents are to recover their costs on appeal.

NOT TO BE PUBLISHED.

CHANEY, Acting P. J.

We concur:

JOHNSON, J.

BENDIX, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.