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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

CRYSTAL PROPERTIES LTD, LP,

Plaintiff and Appellant,

v.

CITY OF GLENDALE,

Defendant and Respondent;

JOHN VINCENTI et al.,

Real Parties in Interest and Respondents.

B258163

(Los Angeles County  
Super. Ct. No. BS138023)

APPEAL from the denial of a petition for writ of mandate in the Superior Court of Los Angeles County. Luis A. Lavin, Judge. Affirmed

The Silverstein Law Firm and Robert P. Silverstein for Plaintiff and Appellant.

Michael J. Garcia, City Attorney and Miah Yun, Assistant City Attorney for Defendant and Respondent City of Glendale.

Graham Vaage, Arnold K. Graham and Alexei Brenot for Real Parties in Interest and Respondents John Vincenti and Palma Vincenti.

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Appellant Crystal Properties Ltd, LP (Crystal Properties) appeals from the trial court's denial of its petition for a writ of mandate pursuant to Code of Civil Procedure section 1085. Crystal Properties contends that Respondent City of Glendale acted without fundamental jurisdiction when the Glendale City Council (City Council) ruled against Crystal Properties in its application for a variance and conditional use permit to develop a vacant parcel of land in Glendale. The Glendale Planning Commission (Planning Commission) had granted Crystal Properties' application, but Real Parties in Interest, John and Palma Vincenti (the Vincentis), appealed that decision to the City Council. Crystal Properties contends that the Vincentis did not file their appeals within the time period allowed by the Glendale Municipal Code (Municipal Code), and that the City Council was therefore without authority to consider the appeal.

### **FACTS AND PROCEEDINGS BELOW**

Crystal Properties owns an undeveloped parcel of land at 3431 Linda Vista Road in Glendale. Because the property is located on a steep hill, it proved difficult to build a single-family house on the property in compliance with Glendale codes, which limit the amount of grading on residential property and allow driveways to be no steeper than a 20 percent gradient. The purpose of the latter requirement is to ensure fire trucks and other emergency services have access to the property.

Crystal Properties applied to the Glendale Community Development Department (Community Development Department) for a variance to allow for a segment of the driveway to be sloped at a 25 percent gradient, and a conditional use permit to allow it to move more than 1,500 cubic yards of earth.<sup>1</sup> After a hearing, the City's public hearing officer denied these applications.

Crystal Properties appealed the denial to the Planning Commission, contending that if it were required to abide by the City's 20 percent gradient requirement, it would

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<sup>1</sup> Crystal Properties filed one application for a variance and another application for a conditional use permit. Throughout this case, the City issued separate decisions regarding each application, and the Vincentis filed a separate appeal for each. For the sake of convenience and because the issues surrounding each application were closely linked, this opinion refers to the Vincentis appeals as a single unit.

require removing existing oak trees, altering the natural topography of the lot, and building large retaining walls that would themselves require a variance. The Vincentis opposed Crystal Properties' application. The Planning Commission agreed with Crystal Properties and reversed the decision of the hearing officer.

The Planning Commission mailed its notice of decision in favor of Crystal Properties to the Vincentis on September 7, 2011. The notice included the following instructions for filing an appeal: "Any appeal must be filed within fifteen (15) days following the actual date of such action (*September 22, 2011*). Appeal forms will be provided upon request and must be filed in the Building and Safety Division, 633 East Broadway, Room 101," the address of the Community Development Department's permit services center. (Emphasis added.) On September 21, Palma Vincenti spoke with the City's principal planner, Howard Malis, who told her that the permit services center, the location where appeals are filed, would be closed on September 22 for a staff training retreat, and that the City would therefore deem an appeal filed on September 23 to be timely filed. Indeed, the permit services center was closed on September 22, though most other city offices, including the city clerk's office, remained open for business.

The Vincentis filed their appeals at the permit services center on September 23. The City Council reversed the decision of the Planning Commission and denied Crystal Properties' application for a variance. Crystal Properties filed a petition for a writ of mandamus pursuant to Code of Civil Procedure section 1085 in the superior court, contending that the Vincentis' appeal was untimely filed, and that the City Council was therefore without jurisdiction to hear the appeal. The superior court denied the petition for a writ, concluding that the filing deadline was extended by one day pursuant to Code of Civil Procedure sections 12a and 12b because September 22 was a holiday for purposes of the statute.

## DISCUSSION

On appeal, Crystal Properties contends that the Vincentis did not timely file their appeal to the City Council, and that because the Municipal Code describes the time requirement for filing an appeal as a “jurisdictional requirement” (Glendale Mun. Code, § 2.88.020, subd. D), the City Council lacked the power to hear the appeal.<sup>2</sup>

The Municipal Code establishes filing requirements for appeals to the City Council. Section 2.88.020, subdivision A, provides that “[t]he person or persons aggrieved by an act or determination of a board or commission shall file a written notice of appeal in duplicate with the department or clerk of the board or commission whose act, ruling or determination is being appealed, not later than fifteen (15) days after the act or determination appealed from, or such other shorter period as set forth under a specific provision of this code governing an appeal from the issuance, denial, revocation or suspension of a permit, approval, decision, license or privilege.” Section 30.62.030, which provides more specific instructions for filing an appeal of an appeal involving zoning, contained similar requirements. At the time of the filing of the Vincentis’ appeal, it stated, “[t]he notice of appeal shall be filed with the Permit Services Center within fifteen (15) days following the decision which is being appealed.” (*Id.*, subd. A.) According to subdivision D of section 2.88.020, the “[t]imely filing of the notice of appeal shall be a jurisdictional requirement.”

Section 12a of the Code of Civil Procedure governs the extension of deadlines for filing of documents. It states that, “[i]f the last day for the performance of any act

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<sup>2</sup> The Vincentis argue that Crystal Properties forfeited this argument by failing to raise it to the City Council. Because Crystal Properties’ challenge attacks the fundamental jurisdiction of the City Council to hear the appeal, it may be raised for the first time on appeal. (*Coachella Valley Mosquito & Vector Control Dist. v. California Public Employment Relations Bd.* (2005) 35 Cal.4th 1072, 1081-1082 [“exhaustion of administrative remedies may be excused when a party claims that ‘the agency lacks authority, statutory or otherwise, to resolve the underlying dispute between the parties’”]; *Mumaw v. City of Glendale* (1969) 270 Cal.App.2d 454, 459-460.)

provided or required by law to be performed within a specified period of time is a holiday, then that period is hereby extended to and including the next day that is not a holiday.” (*Id.*, subd. (a).) By its own terms, it applies to “all . . . provisions of law providing or requiring an act to be performed on a particular day or within a specified period of time, whether expressed in this or any other code or statute, ordinance, rule, or regulation.” (*Id.*, subd. (b).) Courts have applied this section broadly, including to deadlines established by municipal law. (E.g., *Ursino v. Superior Court* (1974) 39 Cal.App.3d 611, 615 & fn. 3; *DeLeon v. Bay Area Rapid Transit Dist.* (1983) 33 Cal.3d 456, 459-461.) Section 12b of the Code of Civil Procedure defines “holiday” for purposes of this statute: “If any city, county, state, or public office, other than a branch office, is closed for the whole of any day, insofar as the business of that office is concerned, that day shall be considered as a holiday for the purposes of computing time under Section[] . . . 12a.”

Crystal Properties contends that September 22, 2011, was not a holiday for purposes of Code of Civil Procedure section 12a, and that the Vincentis’ filing deadline was thus not extended to September 23. And because timely filing is, by municipal ordinance, a jurisdictional requirement, the City Council had no power to overturn the Planning Commission’s decision. (*Mumaw v. City of Glendale, supra*, 270 Cal.App.2d at p. 460.)

Crystal Properties does not dispute that the closure of a public office extends a filing deadline to the next open day. Instead it argues that the Planning Commission was effectively no more than a “branch office” for purposes of Code of Civil Procedure section 12b because the appeal could have been filed with the Glendale City Clerk on September 22, and its closure therefore did not extend the filing deadline. In support of its position, Crystal Properties cites *Bennett v. Suncloud* (1997) 56 Cal.App.4th 91 (*Bennett*). In that case, a plaintiff was unable to file a complaint at the west district of the Los Angeles County Superior Court on the last statutory filing date because that courthouse was closed as a result of the 1994 Northridge earthquake. (*Id.* at p. 98.) The Court of Appeal held that Code of Civil Procedure section 12b did not excuse the late

filing because the west district was a branch of the Los Angeles County Superior Court and local rules provided a choice of filing locations, including one that was open:

“Although no definition of ‘branch office’ appears in the statute, the ordinary definition would include the outlying districts of the superior court. In addition, we note that the local rules permitted appellant to file his complaint in either the west district or the downtown central district.” (*Id.* at p. 99.)

Crystal Properties argues that *Bennett, supra*, 56 Cal.App.4th 91, is controlling because, in this case like the *Bennett* case, the Vincentis had a choice of filing locations, the permit services center or the city clerk’s office, one of which (the city clerk’s office) was open on September 22. In support of the claim that the appeal could have been filed with the city clerk, Crystal Properties cites admissions, deposition testimony, a declaration and an email. The admission stated as follows: “Admit that the Vincenti Appeal of the Project could have been filed in the City Clerk’s Office on September 22, 2011.” An assistant city attorney, answering on behalf of the City, responded “Admit.” The declaration from a former city employee stated that she had accepted “a few” appeals while working as assistant city clerk. Deposition testimony from an employee of the Community Development Department stated that after the permit services center closed each day at 3:30 p.m., a party who wished to file an appeal could do so at the city clerk’s office. The email, dated September 20, 2011, from a Community Development Department employee, suggested posting a sign at the permit services center reading, “[t]he Community Development Department is closed for an all-day staff training. If you are here to file an appeal and this is the last day to do so, you may submit the appeal on Friday, September 23, 2011 by 5:00 p.m. Alternatively, appeals may be filed today in the office of the City Clerk.” This suggestion was not, however, adopted.

This evidence is unpersuasive. The City’s policy regarding the proper location for filing appeals is established by the Municipal Code and the City official publications, not by the practices of city employees. Those official documents establish unequivocally that the proper place for filing an appeal was the permit services center, not the city clerk’s office. The Municipal Code instructed potential appellants as follows: “Applications for

appeal shall be made on notice of appeal forms prescribed by the Director of Community Development and contain all information thereof. The notice of appeal *shall be filed with the Permit Services Center* within fifteen (15) days following the decision which is being appealed.”<sup>3</sup> (Glendale Mun. Code, § 30.62.030, subd. A, current as of 2011, emphasis added.) The notice of appeal form to which the Municipal Code referred stated, “Submit 3 copies of this application to the Permit Services Center.” The notice of decision from the Planning Commission likewise stated that appeals “must be filed in the Building and Safety Division, 633 East Broadway, Room 101,” the address of the permit services center.

In light of this evidence of city policy, the trial court correctly determined that the City’s admission did not conclusively establish that the Vincentis’ appeal could have been properly filed in the city clerk’s office. This was an exercise of the court’s “discretion to determine the scope and effect of the admission so that it accurately reflects what facts are admitted in the light of other evidence.” (*Fredericks v. Kontos Industries, Inc.* (1987) 189 Cal.App.3d 272, 277.) That an employee in the city clerk’s office might

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<sup>3</sup> Crystal Properties notes that the appeal form the Vincentis filled out includes the following instruction: “Prior to completing this form, read the Glendale Municipal Code, Title 2, Chapter 2.88 Uniform Appeal Procedure.” Municipal Code section 2.88.020, subdivision A, states that a party “shall file a written notice of appeal in duplicate with the department or clerk of the board or commission whose act, ruling or determination is being appealed.” Crystal Properties on this basis argues that the Vincentis were authorized to file their appeal with the city clerk’s office. We disagree. If the City Council had intended in this section of the Municipal Code to allow appeals to be filed with the city clerk, it would have stated so explicitly. By referring instead to the “department or clerk of the board or commission whose . . . ruling . . . is being appealed,” the council indicated that parties should file their appeals with the department or clerk specific to the board or commission that issued the ruling. In the case of the Vincentis’ appeal, the ruling was issued by the Planning Commission, which is part of the Community Development Department. Accordingly, appeals were to be filed with the Community Development Department. In 2011, Municipal Code section 30.62.030 defined the filing location within the Community Development Department as the permit services center. Even if there were a conflict between the two provisions of the Municipal Code, the specific filing requirements in section 30.62.030 must take precedence over the general. (*Cumero v. Public Employment Relations Bd.* (1989) 49 Cal.3d 575, 587.)

on some occasions, or even consistently, accept the filing of an appeal from the Planning Commission, and that an employee of the city clerk might possibly have accepted the Vicentis filing is irrelevant. The posted sign on the door of the permit services center on September 22, 2011, made no reference to filing at the city clerk's office, and instead simply stated that the department was closed. When Palma Vincenti inquired with the department, an employee told her that the filing deadline would be extended in light of the office's closing. It would be patently unfair to interpret a statute to require, in effect, that a secret unpublished policy, one actually contrary to the written instructions of the Planning Commission, an arm of the City, provided to litigants, would deprive a person of the opportunity to appeal his case. Not surprisingly, given these facts, even the city clerk himself declared that his office was not authorized to accept these appeals.

The City's later clarification of the Municipal Code in the wake of this case supports that the City's intent comports with our view. The code now provides that if the deadline for filing an appeal "falls on a weekend or a holiday, or when the community development department is closed for business, then the appeal shall be filed no later than the next business day, by 5:00 p.m., when the community development department is open for business." (Glendale Mun. Code, § 30.62.030, subd. A.)

Because the City did not establish that the city clerk's office is an alternative location for filing an appeal, *Bennett, supra*, 56 Cal.App.4th 91, does not govern this case. The trial court did not err in its determination that the Vincentis' appeal was timely filed, and correctly denied Crystal Properties' petition for a writ of mandate under Code of Civil Procedure section 1085.



### **DISPOSITION**

The judgment of the court is affirmed. Respondents are awarded their costs on appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

CHANEY, J.

LUI, J.