Filed 2/13/15 Concerned Citizens of Benedict Canyon v. City of Los Angeles CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

CONCERNED RESIDENTS OF BENEDICT CANYON, et al., Plaintiffs and Appellants, v. CITY OF LOS ANGELES, et al., Defendants and Respondents; TOWER LANE PROPERTIES, INC., Real Party in Interest.	B251227 (Los Angeles County Super. Ct. No. BS140952)

APPEAL from a judgment of the Superior Court of Los Angeles County. Richard Fruin, Judge. Affirmed.

Latham & Watkins, James L. Arnone, Benjamin J. Hanelin and Jeffrey P. Carlin, for Plaintiffs and Appellants.

Michael N. Feuer, City Attorney, Terry Kaufmann Macias, Assistant City Attorney, Michael J. Bostrom and K. Lucy Atwood, Deputy City Attorneys for Defendants and Respondents.

Jeffer, Mangels, Butler & Mitchell, Robert E. Mangels, Benjamin M. Reznik, Matthew D. Hinks for Real Party in Interest.

The instant case is one of two involving the same construction project. Real party in interest Tower Lane Properties (Tower) sought building and grading permits from the City of Los Angeles (the City) for construction of a multi-residence family compound over three contiguous lots in Benedict Canyon, an area on the Westside of the city. One prerequisite for the permits was that the private street upon which the construction was to take place be approved by the City's Planning Department. The Planning Department denied approval of the private street because a precondition to approval—installation of a secondary access road—had not been satisfied. Tower petitioned the Los Angeles Fire Department (LAFD) to accept substitute fire prevention measures in lieu of a secondary access road, which the LAFD did, subsequently recommending to the Planning Director that the condition could be cleared. The Planning Department declined to follow the LAFD's recommendation, instead informing Tower that any waiver or modification of a street approval condition must be obtained from the Planning Department, not the LAFD.

In the companion case, Tower refused to seek a waiver or modification from the Planning Department, but instead instituted writ proceedings against the City, contending it owed a ministerial duty to approve the street and issue building permits because the secondary road condition had been satisfied, as evidenced by the LAFD's recommendation. Alternatively, Tower alleged the condition was obviated by prior City actions. The trial court sustained the City's demurrer to the petition without leave to amend. We affirmed the judgment of dismissal on the primary ground that the Los Angeles Municipal Code vests street approval decisions in the Planning Department, not the LAFD, and the Planning Department is not obligated to follow LAFD recommendations.[1] We further concluded the secondary road condition remained extant (and unsatisfied) despite prior City actions.

Meanwhile, in the instant case, appellant Concerned Residents of Benedict Canyon, a local community group, and Martha and Bruce Karsh, residents of Benedict

[1] *Tower Lane Properties, Inc. v. City of Los Angeles* (B251742, app. pending) (Super. Ct. L.A. County, 2013, No. BS141623). We take judicial notice of the record in B251742.

Canyon (collectively Concerned Residents), appealed the LAFD's recommendation to the Los Angeles City Council. When the City Council refused to hear the appeal, Concerned Residents instituted these writ proceedings to compel the City to process its appeal, vacate the LAFD's action, and comply with the California Environmental Quality Act (CEQA).[2] Concerned Residents further claimed that not only should Tower's building permits be denied until an environmental impact review (EIR) is conducted, but the approval of the very street upon which the construction was to take place was void and should be disapproved, and Tower's plans must be modified to comply with an ordinance passed after they were submitted to the City.

The trial court sustained the City's and Tower's demurrers to the petition without leave to amend.

We conclude: (1) The LAFD's approval of Tower's plans was of no legal effect and gave rise to no actual controversy that would entitle Concerned Residents to relief; (2) the private street approval is not void; and (3) the City's acceptance of Tower's plans for consideration is a matter of discretion as to which mandamus will not lie. Accordingly, we affirm.

Background

Concerned Residents appeals from a judgment of dismissal entered after the sustaining of a general demurrer. Accordingly, we assume the truth of facts properly pleaded in or attached to the petition and may consider judicially noticeable matters. (*Serrano v. Priest* (1971) 5 Cal.3d 584, 591.)

1. *History of the Property*

The property at issue comprises three contiguous lots on approximately five and a half acres fronted by Tower Lane, a private street in the Benedict Canyon neighborhood of Los Angeles. The lots bear the addresses 9933, 9937 and 9941 West Tower Lane. We will refer to them collectively as "the property" and individually by their respective address numbers. The property is in a designated "Very High Fire Hazard Severity

[2] Public Resources Code section 21000 et seq. Further statutory references will be to this code unless otherwise stated.

Zone." (Los Angeles Municipal Code (LAMC), § 57.4908.1.1.) In 1966, Tower Lane, which until then had provided no access to the property, was extended to access lots 9933 and 9937 but not 9941, which until 1998 could be accessed only by means of a driveway running through lot 9937.

In 1998, to comply with regulations requiring that all lots front an approved street for at least 20 feet, the owner of the property adjusted the line between lots 9937 and 9941 to bring a portion of lot 9941 down to Tower Lane. Although the street itself was not changed, its official description was modified to reflect that the street now served three lots rather than two. In 2000, the Planning Department issued a letter stating it provisionally approved of the modification of Tower Lane pending compliance with 16 conditions concerning such matters as utility easements, building standards, and fire safety. This litigation concerns the twelfth condition, which the Planning Department imposed at the recommendation of the LAFD.

Condition No. 12 stated: "Fire Lanes, where required, and dead-ending streets shall terminate in a cul-de-sac or other approved turning area. No dead-ending street or fire lane shall be greater than 700 feet in length or secondary access shall be required." The Planning Department has determined Tower Lane is a dead-end street longer than 700 feet.

A neighbor appealed the Planning Department's conditional approval of Tower Lane, but the City's Board of Zoning Appeals denied the appeal. In its appeal determination report, the board noted the approval of Tower Lane would become void by operation of law unless all conditions were satisfied within three years. (LAMC, former § 18.08, subd. D [private street approval shall be void unless all conditions of approval are completed or fulfilled within three years from the date of approval].) In 2002, the City issued a "Certificate of Compliance" for the 9937/9941 Tower Lane boundary adjustment. In 2005 and 2006, the then-owner demolished a house on the property, carried out some grading, and constructed a 500-foot long, 26-foot high retaining wall.

2. *Tower Sought Building and Grading Permits for Additional Construction*

Tower purchased the property in 2009. In May 2011, it submitted project plans and applications to the City for grading and building permits for 32,452 square feet of residential construction, including a new single-family dwelling, garage and two new retaining walls on lot 9933; a new single-family dwelling with attached garage, two retaining walls, and two water features on lot 9937; and a new two-story single-family dwelling, with basement, to be located atop the existing subterranean garage, a two-story accessory living quarters building, a pool and spa, a pool cabana building, and a pool service and equipment building on lot 9941. The grading activities on each lot were expected to result in the export of 52 cubic yards of earth from lot 9933, 671 yards from lot 9937, and 246 yards from lot 9941, for a total of 969 cubic yards of earth removed.

3. *Secondary Access*

In lieu of a secondary access road as required by Condition No. 12, Tower proposed to install, in the words of Concerned Residents, 40 feet of "zigzagging cement steps and a narrow, twisting steel staircase" between Delresto Drive, immediately to the west of and forty feet below the property, across an ingress-egress utility easement on a neighbor's property.

During the permit review process, city departments cleared most of the conditions for the permits Tower sought, but on September 7, 2012, the Planning Department informed Tower it would not certify Tower Lane (the street) to the Building and Safety Department, and building and grading permits would therefore not issue, unless Tower's plans satisfied the year 2000 street approval conditions, including Condition No. 12. The Planning Department informed Tower no waiver or modification of the conditions by the LAFD would be accepted, and if Tower desired a waiver or modification of any condition it must seek one from the Planning Department, which would require a new private street modification and an environmental review.

Tower nevertheless sought approval of its plans from the LAFD, and on October 17, 2012, Deputy Chief Mark Stormes, a fire marshal with the City's Bureau of Fire Prevention and Public Safety, issued a three-sentence interdepartmental memorandum to

the Planning Director stating, in its entirety: "Subject property has been investigated my [*sic*] members of the Fire Department. [¶] RECOMMENDATION: [¶] The Fire Department has reviewed and approved plot plans. You may clear Conditions 9 through 15."

The Planning Department declined to follow the LAFD's recommendation, and informed the Building and Safety Department that because Tower's plans did not satisfy Condition No. 12, the private street would not be cleared and no building permits should issue. Planning informed Building and Safety that Tower had already been informed that an LAFD recommendation would not be followed, and if Tower requested a waiver or modification of Condition No. 12, it "must apply to the Department of Planning for a new private street modification, which will require environmental review."

The Planning Department reiterated this position to Tower on December 7, 2012, stating in a letter that it would "not accept [the LAFD's] waiver for purposes of the private street clearance. The Fire Department certainly has jurisdiction over the Fire Code, but it does not have jurisdiction over Private Streets. Planning has jurisdiction over Private Streets. [¶] . . . [¶] Tower Lane Properties must either comply with Condition 12 as it is written, or alternatively, it may pursue an administrative remedy by applying to Planning for a new Private Street approval that either eliminates or modifies Condition 12."

On January 28, 2013, the City Attorney informed Tower that the Planning Department had no authority to waive Condition No. 12. "Instead, the Zoning Code only authorizes the Director to act upon an application for a Modification pursuant to [LAMC] Section 18.12, or a new Private Street approval pursuant to Section 18.00 *et Seq*." The City Attorney stated that in reviewing an application for a modification or new approval, "the Planning Department will consider the Fire Department's recommendation, but will of course make its own decision."

Despite the Planning Department having roundly rejected the LAFD's recommendation multiple times, Concerned Residents appealed the recommendation to the Los Angeles City Council pursuant to subdivision (c) of Public Resources Code

section 21151, arguing the recommendation violated CEQA. The City declined to process the appeal.

4. *Tower's Petition for Writ of Mandate*

On its part, Tower, rather than seek a waiver or modification of Condition No. 12 from the Planning Department, filed a petition in the superior court seeking a traditional writ of mandate pursuant to Code of Civil Procedure section 1085. Tower alleged the City owed a ministerial duty to clear Condition No. 12 because: (1) Its plans provided for secondary access by way of a staircase from an adjacent road across a utility easement; (2) the LAFD recommended that Condition No. 12 be cleared; and (3) the City's longstanding practice was to follow LAFD recommendations. The City demurred to the petition, arguing Tower's allegations were insufficient to state a mandate claim because the City owed no ministerial duty to clear an unsatisfied permit condition. The trial court sustained the demurrer without leave to amend on the ground that Tower's plans failed to satisfy Condition No. 12 and the Director of Planning was not obligated to follow LAFD recommendations concerning building permits. In the companion appeal we affirm that ruling. (*Tower Lane Properties, Inc. v. City of Los Angeles* (B251742).)

5. *Expiration of the Conditional Street Approval*

In the September 7, 2012 letter, the Planning Director also notified Tower that even though the 2000 conditional approval of Tower Lane should have become void by operation of law in 2003, the City would not void the approval because Tower presumably relied upon it when it purchased the property. However, the Director stated, no building permit would be issued until Tower demonstrated its plans complied with all the conditions of the 2000 approval.

On September 21, 2012, Concerned Residents filed an administrative appeal with the City's Area Planning Commission, complaining the 2000 approval of Tower Lane became void by operation of law in 2003. (LAMC, §§ 18.01 & 18.08, subd. B [Planning Department actions may be appealed to the Area Planning Commission].) The City declined to process this appeal as well.

6. *Vested Building Rights*

On October 4, 2012, Concerned Residents complained to the Planning Department that Tower's building plans failed to comply with an ordinance enacted shortly after the plans were submitted, and it urged the department to apply the ordinance to Tower's plans. The Planning Department declined to do so, instead continuing to process Tower's plans under pre-ordinance rules.

7. *Concerned Residents' Petition for Writ of Mandate*

On December 21, 2012, Concerned Residents petitioned the superior court for a writ of mandate and sought declaratory and injunctive relief, alleging (1) the LAFD's recommendation to the Planning Department violated CEQA and the Fire Code, (2) the City violated CEQA by refusing to process Concerned Residents' appeal of the recommendation, (3) the City violated the LAMC by allowing Tower to satisfy street approval conditions that lapsed in 2003, and (4) the City violated the LAMC by refusing to apply a new ordinance to Tower's plans. Concerned Residents attached to the petition as exhibits copies of the City's correspondence with and about Tower.

The City and Tower demurred to the petition. Tower argued none of Concerned Residents' causes of action was ripe for review because the City had not yet approved Tower's permit application. The City argued Concerned Residents' allegations failed to state a claim for writ of mandate because the LAFD's recommendation that alternative fire systems be accepted in lieu of secondary access did not constitute a development approval that would subject Tower's project to CEQA, the City had no power to void the 2000 private street approval, and the City applied the proper ordinances to Tower's plans.

The trial court sustained the demurrers without leave to amend, and Concerned Residents timely appealed from the resulting judgment of dismissal.

DISCUSSION

A. Standard of Review

When a demurrer is sustained, we "review[] the complaint de novo to determine whether it alleges facts stating a cause of action under any legal theory." (*Rakestraw v. California Physicians' Service* (2000) 81 Cal.App.4th 39, 43.) "A demurrer tests the

legal sufficiency of factual allegations in a complaint. [Citation.] In reviewing the sufficiency of a complaint against a general demurrer, this court treats the demurrer as admitting all material facts properly pleaded, but not contentions, deductions, or conclusions of fact or law. This court also considers matters that may be judicially noticed." (*Id*. at pp. 42-43.) We may "disregard allegations which are contrary to law or to facts which may be judicially noticed [citation] or which are contradicted by the express terms of an exhibit incorporated into the complaint. [Citation.]" (*Breneric Associates v. City of Del Mar* (1998) 69 Cal.App.4th 166, 180.) Finally, we independently construe the meaning of statutes as a question of law. (*City of Morgan Hill v. Bay Area Air Quality Management Dist.* (2004) 118 Cal.App.4th 861, 870.)

"[W]hen [a demurrer] is sustained without leave to amend, we decide whether there is a reasonable possibility that the defect can be cured by amendment: if it can be, the trial court has abused its discretion and we reverse; if not, there has been no abuse of discretion and we affirm." (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) The petitioner has the burden to show what facts it could plead to cure existing defects in the complaint. (*Total Call Internat., Inc. v. Peerless Ins. Co.* (2010) 181 Cal.App.4th 161, 166.) To meet this burden on appeal, it must "'enumerate facts and demonstrate how those facts establish a cause of action.'" (*Ibid.*)

B. The LAFD's Recommendation

1. *Concerned Residents' Complaint*

In its first, second, third, seventh and eighth causes of action, Concerned Residents alleges the LAFD's recommendation to the Planning Department that Tower's plans be approved constituted an arbitrary, capricious and unauthorized act that violates the Fire Code and CEQA. Concerned Residents seeks a writ of mandate setting aside the recommendation, a declaratory judgment finding that the LAFD violated the Fire Code, and injunctive relief compelling the LAFD to follow the Fire Code and enjoining Tower from proceeding on its project until CEQA review is completed and an EIR certified.

2. *No Actual Controversy Exists*

A writ of mandate may be issued by any court "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 a writ of mandate: """(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; *California Assn. for Health Services at Home v. State Dept. of Health Services* (2007) 148 Cal.App.4th 696, 704.) A writ of mandate may not be issued to compel the exercise of discretion in a particular manner. (*Helena F. v. West Contra Costa Unified School Dist.* (1996) 49 Cal.App.4th 1793, 1799.)

Declaratory relief may be obtained to resolve an "actual controversy relating to the legal rights and duties of the respective parties." (Code Civ. Proc., § 1060; *California Water & Telephone Co. v. County of Los Angeles* (1967) 253 Cal.App.2d 16, 22.) An action not founded upon an actual controversy but brought for the purpose of securing a determination of a point of law, will not be entertained. (*Golden Gate Bridge & Highway Dist. v. Felt* (1931) 214 Cal. 308, 316.) "'The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. [Citation.] It must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.'" (*Pacific Legal Foundation v. California Coastal Com.* (1982) 33 Cal.3d 158, 170-171.) This requirement "prevents courts from issuing purely advisory opinions. [Citation.] It is rooted in the fundamental concept that the proper role of the judiciary does not extend to the resolution of abstract differences of legal opinion. It is in part designed to regulate the workload of courts by preventing judicial consideration of lawsuits that seek only to obtain general guidance, rather than to resolve specific legal disputes." (*Id.* at p. 170.)

The purpose of a declaratory judgment is "'to serve some practical end in quieting or stabilizing an uncertain or disputed jural relation.' [Citations.]" (*Columbia Pictures*

Corp. v. DeToth (1945) 26 Cal.2d 753, 760.) The court may refuse to entertain a claim for declaratory relief that is unnecessary or improper at the time. (Code Civ. Proc., § 1061.) We employ a two-pronged test to determine whether an actual controversy exists: "(1) whether the dispute is sufficiently concrete to make declaratory relief appropriate; and (2) whether the withholding of judicial consideration will result in a hardship to the parties." (*Farm Sanctuary, Inc. v. Department of Food & Agriculture* (1998) 63 Cal.App.4th 495, 502.) Under the first prong, the courts will decline to adjudicate a dispute if the abstract posture of the proceeding results in a "contrived inquiry" in which the court is asked to speculate on the validity of a hypothetical act. (*Pacific Legal Foundation v. California Coastal Com*., *supra*, 33 Cal.3d at p. 172.) Under the second prong, the courts will decline to intervene to settle a mere difference of opinion involving no imminent or significant hardship. (*Id*. at pp. 172-173.)

"[T]he decision whether to grant or deny declaratory relief is a matter within the trial court's discretion, and will not be disturbed on appeal absent a clear showing the discretion was abused." (*City of Santa Monica v. Stewart* (2005) 126 Cal.App.4th 43, 58.)

Here, no actual controversy exists. Concerned Residents contends the LAFD has incorrectly decided that supplemental fire protection measures may be substituted for secondary vehicular access. It seeks an order directing the Planning Department, which rejected the LAFD's recommendation and put Tower's project on hold, to reject the recommendation and put the project on hold.

Whether or not the LAFD properly exercised its discretion to approve Tower's supplemental fire protection measures (LAMC, former § 57.09.03, subd. C [fire chief may accept supplemental fire protection equipment in lieu of compliance with certain Fire Code provisions]), its decision led to no action. A communication between two city departments that results in no action gives rise to no duty and causes no hardship and no controversy. Concerned Residents in essence invited the trial court to speculate about hypothetical future actions the LAFD or Planning Department might take and guess whether they might violate the Fire Code or CEQA. The trial court properly declined the

invitation. And the only hardship of which Concerned Residents complained was that the City refused to consider its appeal. But refusal of the City to consider an appeal regarding a hypothetical controversy resulted in no imminent and significant hardship.

At the end of the day, Concerned Residents wants Tower's project to undergo environmental review and comply with the Fire Code. The problem is that any alleged entitlement to compel these results is purely conjectural absent some action by the City that avoids them. None is alleged here. On the contrary, Concerned Residents admits the Planning Department rejected the LAFD's recommendation, refused to certify Tower's private street, and informed Tower any variation from Condition No. 12 would void the 2000 conditional street approval and require re-approval, which will require environmental review. Because the present state of affairs is as Concerned Residents would have them, no controversy exists. The writ petition was brought to secure an advisory opinion on a point of law based upon hypothetical facts. The demurrers to it were properly sustained.

We need not determine whether the LAFD properly exercised its discretion to modify Fire Code requirements.

3. *No Right Existed Under CEQA to Appeal the LAFD's Recommendation*

Concerned Residents claims CEQA obligates the City to consider its appeal of the LAFD's recommendation. We disagree.

In enacting CEQA, the Legislature declared that maintaining a quality environment was a matter of statewide concern. (§ 21000, subd. (a).) CEQA requires state and local public agencies to consider the environmental impacts of projects and to prepare an EIR for any project which has a significant effect on the environment. (§§ 21100, subd. (a), 21151, subd. (a).) The purpose of an EIR is to inform decision makers and the public of the potential environmental impacts of a project and to identify feasible alternatives and measures to mitigate or avoid the adverse effects. (§ 21002.1, subd. (a).)

CEQA applies only to "discretionary projects proposed to be carried out or approved by public agencies." (§ 21080, subd. (a); *San Diego Navy Broadway Complex Coalition v. City of San Diego* (2010) 185 Cal.App.4th 924, 933.) A project is "an

activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." (§ 21065.) For example, issuance of a building permit may constitute a "project." (§ 21065, subd. (c).)

An appeal under CEQA is available where "a nonelected decisionmaking body of a local lead agency . . . determines that a project is not subject to [CEQA]." (§ 21151, subd. (c).)

Here, no building permit has as yet issued and neither the LAFD nor the Planning Department has determined that Tower's project is not subject to CEQA. Therefore, nothing the City has done constitutes a project and no appeal under CEQA is yet available.

C. The 2000 Private Street Approval is not Void

In its fifth cause of action, Concerned Residents observes that the 2000 private street approval contained 16 conditions and that Condition No. 12 has not been satisfied. It argues this renders the approval void pursuant to former LAMC section 18.08, subdivision D, which in 2000 provided that a conditional private street approval would become void if all conditions were not fulfilled within three years. Concerned Residents seeks a writ of mandate compelling the City to set aside its decision to permit Tower to proceed with its project without seeking re-approval of the street.

As noted, the 2000 street approval contained several conditions, some or all of which are as yet unsatisfied. Some concerned Tower Lane itself and several concerned future building that might occur on the parcels fronted by it. The latter conditions, including No. 12, were by their nature prospectively contingent—they pertained to buildings that might or might not be constructed at some future time.

To the extent any conditions pertaining only to Tower Lane were unsatisfied, they were waived by the City when it issued a Certificate of Compliance in 2003. The 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." By issuing the certificate, the City established that the parcels fronted by Tower Lane were lawful, i.e., that Tower Lane itself was lawful. It is too late now to revisit that determination.

Concerned Residents argue the 2000 street approval merely created a lawful parcel of land but did not guarantee a buildable lot. We agree. And for that reason, although approval of Tower Lane itself cannot be voided, conditions pertaining to construction on parcels fronted by it may yet be enforced.

In a related vein, in its fourth cause of action Concerned Residents contended the City's implementation of conditions attached to the 2000 private street approval winds the clock back to 2000 and grants Concerned Residents the right to challenge the original approval in toto. We disagree.

Under LAMC section 18.08, the Planning Director is authorized to approve a private street map after public notice and a hearing. Any person aggrieved by an action or determination of the director with respect to a street map may appeal from the action within 15 days. After that, the action of the director becomes final. (LAMC, § 18.08, subd. B.) To conclude otherwise would potentially allow endless reviews and appeals of private street approvals, resulting in loss of certainty.

Consonant with the City's and Concerned Residents' view that the 2000 private street approval legitimized a parcel of land but not necessarily the buildings later to be constructed on it, no action the City later takes concerning those buildings constitutes a new *street* approval. Therefore no such action offers an opportunity to challenge the original approval outside the 15-day window provided by LAMC section 18.08.

D. Tower's Vested Rights

Tower submitted its building plans to the City on May 3, 2011. LAMC section 12.26 provides that "[w]henever plans sufficient for a complete plan check are accepted by the Department of Building and Safety and a fee is paid, a vested right is granted to

the project to proceed with its development in substantial compliance with the zoning, and development rules, regulations, ordinances and adopted policies of the City of Los Angeles in force on the date that the plan check fee is paid." (LAMC, § 12.26, subd. A.3.) On May 9, 2011, an ordinance took effect which limits hillside development, particularly grading, and would potentially cause Tower to revise its plans substantially. In its sixth cause of action, Concerned Residents allege Tower's plans must be subjected to the new ordinance because the plans it submitted to the City on May 3, 2011 were incomplete, which deprived it of any vested right to proceed under the old ordinance. We disagree.

LAMC section 12.26 does not require submission of complete plans, merely of plans "sufficient for a complete plan check." Whether plans suffice for a complete plan check is a matter squarely within the City's discretion. Administrative mandamus will not lie to compel the City to exercise its discretion in any particular way.

Concerned Residents contends Tower's vested rights have expired. Again, we disagree.

The vesting afforded by LAMC section 12.26 expires 18 months after plans are submitted. (LAMC, § 12.26, subd. A.3.) However, "[i]f the holder of any permit issued by the Department presents satisfactory evidence that unusual construction difficulties have prevented work from being started or continued without being suspended within the 180-day time period or completed within the two-year period of validity, the Department or the Board may grant extensions of time reasonably necessary because of such difficulties." (LAMC, former § 98.0603.) Here, Concerned Residents admitted in its petition that the City has extended Tower's vested rights. This extension necessarily implies the City made a determination that circumstances justified it.

Concerned Residents contends that whether Tower's plans were sufficient for a complete plan check and whether unusual circumstances existed that supported an extension of time are factual matters that cannot be determined on demurrer. The argument is without merit. There is no dispute that some plans were submitted and that some construction difficulties existed. The only question is whether the plans and

difficulties sufficed to justify the City's actions. That question is purely a matter of discretion, as to which administrative mandamus will not lie. The trial court therefore properly sustained the demurrer and denied leave to amend.

DISPOSITION

The judgment is affirmed. The City and Tower are to recover their costs on appeal.

NOT TO BE PUBLISHED.

CHANEY, Acting P. J.

We concur:

JOHNSON, J.

MILLER, J.*

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