

The Honorable Robert O'Brien, Department 85
Hearing date 07/01/10

Holmby-Westwood Traffic Committee, et
al. v. City of Los Angeles
BS 120893

Tentative decision on petition for writ of
mandate: granted

Petitioners Holmby-Westwood Traffic Committee, Esther Magna and Philip Gabriel ("Petitioners") apply for a writ of traditional mandamus commanding Respondents City of Los Angeles, City of Los Angeles Department of Transportation, and City of Los Angeles Department of City Planning (collectively, "City") to permanently implement certain traffic calming measures within a defined area in the Westwood neighborhood, pursuant to a Neighborhood Protection Plan. The court has read and considered the moving papers, opposition and reply, and renders the following tentative decision.

A. Statement of the Case

Petitioners commenced this proceeding on May 29, 2009. They seek a writ of mandate under CCP section 1085 and breach of contract. Although the Petition is not entirely clear, the breach of contract claim asserts that Petitioners have been damaged by the breach, and seeks specific enforcement of the contract. Both claims seek a judgment or writ that the City implement and install on a permanent basis the temporary improvements at the intersections of Le Conte and Hilgard, Weyburn and Hilgard, and Lindbrook and Hilgard. Petitioners are seeking to compel the City and Real Party-in-Interest Casden Glendon LLC ("Casden") to comply with the express terms of a Neighborhood Protection Plan ("NPP") that was adopted as a mandatory Condition of Approval for the construction of a mixed-use residential and commercial project known as the Palazzo Westwood, located on Glendon and Tiverton Avenues, in the area of Los Angeles known as Westwood (the "Palazzo project") in order to prevent traffic from the project from intruding into the adjacent residential neighborhood.

The Petition alleges in pertinent part as follows. In August 2004, the City Council issued certain land-use approvals, including general plan and specific plan amendments, permitting the construction of the Palazzo project. The residential neighborhood to the east of the Palazzo project was known to experience heavy traffic, including in particular the use of certain of its streets as "cut-through" pathways into and out of the commercial core of Westwood Village so as to avoid congestion on the major arteries serving the area. In order to mitigate against the intrusion of traffic generated by the Palazzo project into the adjoining residential neighborhood, the Site Plan Conditions of Approval for the Palazzo project included the specific requirement that, prior to the issuance of any certificate of occupancy, the developer (Casden) must submit and guarantee the finding for a NPP that would include various traffic control measures designed to discourage and reduce out-of-neighborhood traffic from entering into these residential streets.

In early 2007, Casden submitted and received approval of a NPP developed in consultation with the Los Angeles Department of Transportation ("DOT") and City Planning Department. The NPP required Casden to establish and pay for a five-year traffic monitoring program to assess traffic levels at key intersections. The NPP did not require any traffic mitigation measures, but instead noted that appropriate measures shall be implemented if the monitoring identified significant project-related traffic impacts.

Despite a requirement in the Conditions of Approval for the Palazzo project that the NPP be developed in consultation with neighborhoods in the project vicinity, that did not happen. Neighborhood representatives subsequently worked with Casden, the Planning Department, and DOT to develop a mutually agreeable plan that established traffic protections before monitoring revealed the need for them.

The result was the 2008 NPP, which reflected a consensus between the City, Casden, and the affected neighborhoods's representatives. The 2008 NPP was memorialized in a written contract signed by representatives of Casden, the City, and residents. A Planning Department official signed on behalf of the City. The 2008 NPP required DOT to install four specified traffic calming measures for a six-month trial period in an effort to restrict cut-through traffic in the neighborhood adjoining the new development project. Following the trial period, the residents of the immediately affected neighborhood, as specifically defined in the NPP (the "Affected Areas"), would be surveyed to determine whether they supported the traffic mitigation measures, and if two-thirds of the households in the Affected Areas indicated their approval, the measures would be installed on a permanent basis, at Casden's expense.

The traffic calming measures were installed on a temporary basis in 2008, and proved to be successful in reducing both the volume and the speed of cut-through traffic in the adjacent neighborhood. The post-installation survey required by the NPP was conducted earlier this year, and the households in the defined Affected Areas voted overwhelmingly to approve the measures: Over 72 percent of the households entitled to vote on the issue pursuant to the NPP voted to install all of the traffic calming measures and restrictions on a permanent basis.

The City refused to take the necessary actions to make the traffic mitigation measures permanent, and has now authorized and is threatening to remove all of the existing traffic calming measures based upon its contention that the results from a broader survey of residents than that specified in the NPP — a survey that included hundreds of residences outside of the defined Affected Areas not significantly impacted by the cut-through traffic — revealed that "only" 60 percent of the households in this expanded area approved of all of the temporary traffic mitigation measures.

B. Standard of Review

"A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by such inferior tribunal, corporation, board, or person." CCP §1085(a).

A traditional writ of mandate under §1085 is a method of compelling the performance of a legal, usually ministerial duty. Pomona Police Officers' Assn. v. City of Pomona, (1997) 58 Cal.App.4th 578, 583-584. "Generally, a writ will lie when there is no plain, speedy, and adequate alternative remedy; the respondent has a duty to perform; and the petitioner has a clear and beneficial right to performance." *Id.* at 584 (internal citations omitted). When an administrative decision is reviewed under §1085, judicial review is limited to an examination of the proceedings before the agency to determine whether its action was arbitrary, capricious, or entirely lacking in evidentiary support, or whether it did not follow the procedure and give the notices required by law. *Id.*

C. Statement of Facts

In August 2004, the City approved a general plan amendment to the Westwood Community Plan and the Transportation Element in connection with developer Casden's proposed construction in Westwood. One of the Conditions of Approval included a Neighborhood Protection Plan ("NPP"), to help control against the intrusion of project-related traffic into local residential neighborhoods. The NPP was required to be submitted for approval by the DOT and Department of City Planning prior to the issuance of any certificate of occupancy for the project.¹ The conditions required that implementation of the plan be initiated within one year of the issuance of any certificate of occupancy, contingent upon community and Council District office consensus concerning the physical boundaries and components of the plan.

Casden submitted its proposed NPP in 2007, which had been developed in consultation with the City's DOT and its Planning Department. The NPP called for Casden to establish a five-year-long traffic monitoring program to assess traffic levels at certain key intersections and along certain neighborhood streets both prior and subsequent to project occupancy. The 2007 NPP did not require any specific mitigation measures, but did identify possible options which could be used if significant project-related impacts were identified. Casden was required to provide a \$180,000 irrevocable letter of credit to guarantee funding for implementation of the NPP and mitigation measures. The NPP provided that any mitigation measures "appropriate to the specific, significant project-related impacts will be developed by Casden and its traffic engineer, in consultation with neighborhood organizations representing the potentially affected communities as identified by representatives of the Fifth District Council Office, and will be subject to review by the City of Los Angeles Department of Transportation (LADOT) Neighborhood Traffic Management Section. The Director of Planning and the General Manager of LADOT (or their designees) shall have the final approval authority with respect to the measure(s) and design(s) identified above."

Sometime in 2008, Casden, along with the City (through its Department of Planning) and residents of the neighborhood in the project vicinity within a specifically-defined "Affected Area" engaged in negotiations to amend the 2007 NPP, which the 2007 NPP specifically anticipated. Participating community representatives agreed upon the need to amend the NPP in order to implement traffic mitigation measures more quickly than the five-year phase contemplated in 2007. Accordingly, Plan Amendments were drafted (and reviewed to the satisfaction of the DOT, as required in the 2007 NPP) for the expressly stated purpose of expediting improved traffic management measures in the defined Affected Areas and for better delineating the Parties' respective obligations and responsibilities.

The Amended Plan required LADOT to install certain temporary improvements, which were paid for out of a \$50,000 fund provided by Council District 5 from the Neighborhood Transportation Management Fund, and which were to remain in place for a six-month trial period. In turn, the \$180,000 letter of credit was released by LADOT and replaced with an \$80,000 letter of credit guaranteeing Casden's expenses with respect to the temporary

¹For reasons unexplained, the City believes this was not mandatory despite the fact that it was a condition of approval, and employs the mandatory language "shall."

improvements.

The 2008 Amendments provided that after a trial period of up to six months, LADOT and the Holmby Westwood Property Owners Association would send out a mail survey to all households within the specifically defined Affected Areas. If there were a 40% or greater response rate to the mail survey, and the survey indicated a 66.7% or greater approval rate of the temporary improvements, then the improvements would be deemed successful.

The Amendments further provided that the geographical scope of the defined Affected Areas could be expanded by LADOT “to include residential areas east of Hilgard and north of Lindbrook immediately around the intersections and street segments listed [] if such residential areas are deemed significantly impacted (according to LADOT criteria for significance) by the Plan Amendment after one-time traffic counts to be conducted at the [identified] intersections and street segments...”

If the temporary improvements were deemed successful, Casden was to install certain permanent mitigation measures. If the measures were deemed unsuccessful, then they would be removed, and alternate traffic calming measures could be considered for the Affected Areas.

The 2008 Amendment recognized the possibility that installation of the specified traffic control measures — which were designed to control against the intrusion of cut-through traffic into and out of the defined Affected Areas immediately east of the Palazzo Westwood project by diverting that traffic in a southerly direction to Wilshire Boulevard — might also result in the diversion of some additional cut-through traffic into the residential streets and neighborhoods just to the north of the Affected Areas, through the intersections of Hilgard and Manning or Hilgard and Westholme Avenues. To address this possibility, the NPP called for one time traffic counts to be conducted at certain specified intersections and street segments in the surrounding neighborhood, and it allowed for the geographical scope of the defined Affected Areas to be expanded, and thus for more households to participate in the survey, but only if the traffic counts demonstrated that these additional residential areas were “significantly impacted by the installation of the Temporary Improvements according to LADOT’s established criteria for significance.

As required by the 2008 Amendment, the traffic calming measures and restrictions were installed by LADOT on a temporary basis in February 2008. They proved successful in reducing the neighborhood cut-through traffic. Measurements of traffic conducted before and after the mitigation measures were implemented found that they reduced the daily traffic volume within the Affected Areas by nearly 25 percent on average. On Le Conte Avenue, there was a reduction of 2,151 cars per day, reflecting a 55.4 percent reduction in daily traffic; at peak hour, traffic was reduced by 57.3 percent. In addition, the average speed of vehicles on these streets was reduced by least 10 percent, and as much as 26.3 percent on Le Conte Avenue. The pre- and post-installation traffic counts also established that, according to LADOT’s established criteria for significance, implementation of the NPP’s traffic control measures did not significantly impact any residential areas outside of the defined Affected Areas. LADOT’s Traffic Study Policies and Procedures provide that a residential street with an average daily traffic volume (“ADT”) of 1,000 or more vehicles — such as Manning Avenue — is not “significantly impacted” unless there is at least a 12 percent increase in ADT. None of the manual traffic counts taken at the intersections and street segments that were monitored outside of the defined Affected Areas showed an increase in ADT of the magnitude that would qualify them as being

“significantly impacted” using the LADOT’s criteria. Thus, according to the express terms of the NPP, the only households that were entitled to vote on whether the temporary traffic control measures should be implemented on a permanent basis were those located within the defined Affected Areas. Nevertheless, when LADOT distributed the survey, it unilaterally expanded the survey area to include households that were located more than half a mile from the defined Affected Areas.

Over Petitioners’ objections, in February 2009, the DOT mailed a ballot to all residences within its unilaterally selected, and impermissibly expanded, survey area. The ballot, designed by LADOT, first required voters to mark either “Yes” or “No” on whether they supported all four Temporary Improvements; if a voter checked “No” on the first question, the voter was then given the option of selecting which of the individual mitigation measures the voter favored, if any.

Far more than the required two-thirds of the households in the Neighborhood Protection Plan’s defined Affected Areas voted “Yes” to approve all of the traffic mitigation measures on a permanent basis; even when including the additional residence along the length of Manning Avenue that were not within the defined Affected Areas, over 72 percent of the surveyed residents supported making all of the listed traffic control measures permanent. Indeed, even using the DOT’s entire expanded survey area, almost 60 percent of the voters supported the permanent implementation of all of the Improvements. Even though well more than 66.7 percent of the households in the NPP’s defined Affected Areas voted to approve all four of the Temporary Improvements set forth in the adopted NPP, the City has refused to implement and install the traffic control measures on a permanent basis, as is required by the terms of the 2008 NPP. Instead, the DOT and the City contend that the Temporary Improvements did not receive the approval of the necessary two-thirds super-majority, and were thus “unsuccessful,” because supposedly only 59.28 percent of the survey respondents voted “Yes” in support of all six of the proposed traffic control measures listed on the ballot. Had LADOT properly confined its survey to the defined Affected Areas identified in the 2008 NPP, as required, the Temporary Improvements would have been deemed “successful” by virtue of having received the requisite 66.7 percent super-majority support of those actually entitled to vote.

D. Analysis

Petitioners contend that the City has a ministerial obligation to comply with the terms of the duly adopted Neighborhood Protection Plan and the Site Plan Conditions of Approval for the Palazzo Westwood project. The NPP and the Conditions of Approval require the City and Casden to permanently install and implement the four specified traffic control measures at the intersections of Le. Conte and Hilgard, Weyburn and Hilgard, and Lindbrook and Hilgard, based upon the approval of the Temporary Improvements by more than 66.7 percent of the households in the Affected Areas, as defined in the NPP. By refusing to make the Temporary Improvements permanent and instead ordering their removal, the City has failed to comply with its mandatory obligation to comply with the express terms of the Neighborhood Protection Plan that it adopted pursuant to the Palazzo Westwood Conditions of Approval. Petitioners are correct.

Both parties devote considerable portions of their brief discussing whether the NPP and its amendments constitute a contract. The arguments on both sides miss the mark, inasmuch as the conditions of approval for the project, which include the NPP and its amendments, are not so

much a matter of contract as they are a matter of law. In essence, the conditions attached to the project carry the force of law. The issue in this case is not whether the City has a contractual duty to implement the traffic calming measures, or whether Petitioners have a right to enforce said "contract," but whether the City is required to comply with the law. The answer to this question is unequivocally yes.

When the City approved a general plan amendment to the Westwood Community Plan and the Transportation Element in connection with developer Casden's proposed construction in Westwood, one of the Conditions of Approval included a Neighborhood Protection Plan ("NPP"), to help control against the intrusion of project-related traffic into local residential neighborhoods. Thus, the NPP effectively became law. Accordingly, the City and its various departments (which include LADOT) have a ministerial duty to enforce and comply with the law. *See, e.g., Terminal Plaza Corp. v City & County of San Francisco*, (1986) 186 Cal.App.3d 814, 830-831.

Furthermore, the terms of the NPP and its Amendments are clear and unambiguous. LADOT had a ministerial duty to distribute the ballot only to those residents within the specifically defined Affected Areas because the traffic survey revealed that according to LADOT's established criteria for significance, implementation of the NPP's traffic control measures did not significantly impact any residential areas outside of the defined Affected Areas. None of the manual traffic counts taken at the intersections and street segments that were monitored outside of the defined Affected Areas showed an increase in ADT of the magnitude that would qualify them as being "significantly impacted" using the LADOT's criteria.

The City lacks the discretion to unilaterally "change its mind" regarding the geographical scope of the survey called for by the Neighborhood Protection Plan and to disregard the results obtained from those households located within the defined Affected Areas. "Where a statute or ordinance clearly defines the specific duties or course of conduct that a governing body must take, that course of conduct becomes mandatory and eliminates any element of discretion." *Great Western Savings and Loan Assoc. v. City of Los Angeles*, (1973) 31 Cal.App.3d 403, 413. "Mandate will issue to compel a public body to perform a ministerial act." *Terminal Plaza Corp. v. City and County of San Francisco*, *supra*, 186 Cal.App.3d at 831. The City's obligation to comply with the law, as expressed its the terms and conditions set forth in the Palazzo Westwood Conditions of Approval and the Neighborhood Protection Plan, is a ministerial duty that may be enforced by the issuance of a writ of mandate.

In *Terminal Plaza*, for example, the court of appeal held that where the terms of a planning commission resolution approving a development project unambiguously required the developer to construct a pedestrian way as a condition for approval the project, the developer and the city had a ministerial obligation to adhere to the terms of the resolution, regardless of the city's changed opinion about the feasibility of the condition. 186 Cal.App.3d at pp. 829, 830, 834. The court noted that compliance with the conditions of approval is a ministerial obligation, "particularly... where the condition is for the public benefit." *Id.* at p. 834. Indeed, the court admonished, "[i]f we were to accept respondents' theory we would make a mockery of the planning commission and the entire planning process." *Id.* at p. 835. The court therefore concluded that the City "has a ministerial duty to enforce the clear requirements of the pedestrianway condition imposed by the commission." *Ibid.*

Similarly, in *Harbach v. El Pueblo de Los Angeles Historical Monument Commission*,

(1971) 14 Cal.App.3d 828 (relied upon by the Terminal Plaza court), the court held that the trial court had properly issued a writ of mandate to compel the Commission to comply with a resolution it had adopted agreeing to relocate and restore a particular building within a Historical Monument. The court concluded that once the commission had exercised its discretion to adopt a certain course of action, it had a ministerial duty to implement the resolution. Id. at p. 834. In addition, the court held, because others had foreseeably and detrimentally relied upon the Commission's adoption of the resolution, it was estopped from changing its course of action or attempting to rescind or modify the resolution. Ibid.

The City has a ministerial duty to comply with the law, which in this case includes the duty to implement as permanent the Temporary Improvements that were approved by a supermajority of the residents within the defined Affected Areas.

The petition for writ of mandate is granted.