

A

(6)

Lamar Advertising Company v. County of Los Angeles
BS141216
April 25, 2014

Petition for Administrative Mandamus (Moving Party: Petitioner
Lamar Advertising Company)

Respondents' request for judicial notice is granted. Evidence Code
§ 452(b), (c).

The matter is remanded to Respondent with instructions to supplement its decision with discussion or findings that address all of the relevant issues advanced by Petitioner, expose the Respondent's mode of analysis and reveal the basis for the Respondent's decision. *Topanga Assn. for a Scenic Community v. County of Los Angeles* ("Topanga") (1974) 11 Cal.3d 506.

The petition seeks review of Respondent's final zoning enforcement order following an appeal taken pursuant to Los Angeles County Code ("LACC") § 22.60.390(C). The County Code authorizes appeals from a final zoning enforcement order. LACC § 22.60.010. The Code requires the hearing officer to "preside over the public hearing and hear testimony for and against an application," and to make findings and a decision following the public hearing. LACC § 22.60.020(A),(B). Because the County Code requires a hearing, administrative mandamus is appropriately applied to review Respondent's decision. CCP § 1094.5(a); see generally, *Helene Curtis, Inc. v. Los Angeles County Assessment Appeals Boards* (2004) 121 Cal.App.4th 29, 37.

Petitioner was served with a final zoning enforcement order concerning its billboard on June 29, 2009 (AR 10-11). The order indicated that Petitioner's billboard was in violation of LACC §§ 22.32.010, 22.32.010, and 22.44.126(C)(5), and ordered compliance within 15 days of July 8, 2009, unless Petitioner

appealed the order (AR 10). Petitioner promptly appealed, indicating that the sign had been permitted since 1966 and that recent construction on the sign was repair from damage resulting from a windstorm (AR 12). The matter was first considered by Respondent's hearing officer Paul McCarthy on September 15, 2009 (AR 75-119). Near the conclusion of the hearing, Hearing Officer McCarthy suggested that the matter might be more expeditiously resolved by applying for a non-conforming use permit from Respondent (AR 112, 115-116). The appeal of the enforcement order reconvened on November 6, 2012, again before Hearing Officer McCarthy (AR 188-211), following Petitioner's withdrawal of its application for a non-conforming use permit on October 2, 2012 (AR 190). On December 6, 2012, the Hearing Officer denied the appeal (AR 217-218).

Exhaustion of Administrative Remedies. Respondent contends that this writ proceeding is barred by Petitioner's withdrawal of its non-conforming use permit application and failure to pursue that application through its attendant appeals process. *Mani Brothers Real Estate Group v. City of Los Angeles* (2008) 153 Cal.App.4th 1385, 1394-1395. Respondent's contention has no merit. An appeal from a final zoning enforcement order under LACC § 22.60.390(C) is a one-tier appeal from a finding by Respondent that a real property owner is maintaining its property in violation of the applicable zoning ordinances. An application for a non-conforming use permit under LACC § 22.56.1550 and § 22.60.200, *et seq.*, begins with an application for a permit, followed by a two-tier appeals process, first to a hearing officer and then to the Planning Commission. LACC §§ 22.56.1550(B); 22.56.085(E). Petitioner's failure to exhaust the application process for a nonconforming use permit thus has no bearing on whether it exhausted its remedies with respect to its appeal from the final zoning enforcement order. Petitioner has exhausted its administrative remedies with respect to the appeal from the final zoning enforcement order that its writ petition puts at issue.

Topanga. Petitioner asserts that Respondent’s Hearing Officer’s statement of decision does not comply with the requirements of *Topanga Assn. for a Scenic Community v. County of Los Angeles* (“*Topanga*”) (1974) 11 Cal.3d 506. The argument is well taken. *Topanga* requires that agency decisions include a reasoned progression from facts to resulting conclusions; that the agency “bridge the analytic gap” between the raw evidence and ultimate decision or order. *Id.* at 514-515. The import of *Topanga* is to ensure that the administrative agency’s analytical process is available for the Court’s review. A decision is sufficient “if a court has no trouble under the circumstances discerning the analytic route the administrative agency traveled from evidence to action.” *Great Oaks Water Co. v. Santa Clara Valley Water District* (2009) 170 Cal.App.4th 956, 971.

The “substantive” basis for the hearing officer’s decision fits in two paragraphs on a single page in the record (AR 217). The statement of decision does not discuss what the evidence in the record indicated with respect to the damage and repair of the sign. The decision does not discuss the application of the Outdoor Advertising Act, in particular Civil Code § 5412, or the applicable regulations, particularly the provision for “customary maintenance” and “destroyed displays” under title 4, §§ 2270 and 2271 of the Administrative Code. The decision does not discuss the appropriate interplay of state and local regulatory power or refer to the Court of Appeal’s opinion in *Viacom Outdoor, Inc. v. City of Arcata* (2006) 140 Cal.App.4th 230. The decision does not indicate whether the hearing officer determined the billboard had been repaired or rebuilt and why. The decision also states that Petitioner did not receive appropriate approvals for its “repairs” to the billboard, without citing any regulation that would require a permit for such repairs. Nor does the decision discuss the evidence or law concerning the comparison of the repair cost to the value of the billboard or the timeliness of the repair under LACC §

22.56.1510(G), a central issue with respect to the acceptability of a repair for a non-confirming use. Discussion of these issues comprises the *Topanga* “analytical bridge.” *Topanga*, 11 Cal.3d at 514-515.

Unlike the scenario envisioned in *Great Oaks* and *Environmental Protection & Information Center*, the analytic route traveled by Hearing Officer McCarthy in his decision to deny the appeal is not discernable. *Great Oaks Water Co. v. Santa Clara Valley Water District, supra*, 170 Cal.App.4th at 971. The matter is remanded and the hearing officer directed to supplement his decision, revealing the mode of analysis and indicating the basis for Respondent’s decision. *Glendale Memorial Hospital & Health Center v. Department of Mental Health* (2001) 91 Cal.App.4th 129, 140.

The Court rejects Respondent’s contention, assertedly based on Government Code § 65010(b), that Petitioner must show prejudice resulting from the failure to comply with the *Topanga* requirements. Respondent offers no authority for the proposition that the Court’s decision to remand for further findings based on *Topanga* defects is controlled by Government Code § 65010.