STATE OF MICHIGAN

COURT OF APPEALS

CITY OF SOUTH HAVEN,

Plaintiff-Appellant,

and

VANDERZEE SHELTON SALES & LEASING, INC., 2D, INC., and SHARDA, INC.,

Plaintiffs,

v

VAN BUREN COUNTY ROAD COMMISSION,

Defendant-Appellee.

UNPUBLISHED
May 16, 2006

No. 266724
Van Buren Circuit Court
LC No. 04-052554-CZ

Before: Meter, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

Plaintiff City of South Haven (the city) appeals as of right the trial court's order granting summary disposition of its claims for mandamus and substantive and procedural due process violations in favor of defendant Van Buren County Road Commission (VBCRC).[1] We affirm.

I. Basic Facts and Procedural History

This case arises from the VBCRC's refusal to grant the city's request for a driveway permit allowing access from a commercial parcel owned by the city onto a county road designated by the commission as a "controlled access corridor."[2] It is not disputed that the

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[1] The trial court also summarily disposed of the city's claim for violation of its constitutional right to equal protection. However, the city does not challenge the dismissal of that claim on appeal.

[2] According to the VBCRC resolution so designating the road, the term "controlled access corridor" is a "special designation [that] will allow the Road Commission to better manage both commercial and industrial driveways where they enter . . . major highways."

commission's refusal to issue the requested permit stemmed from the city's failure to provide the VBCRC with certain requested information, including a traffic impact analysis comparing the relative safety of the driveway proposed by the city with various other access alternatives, including the rear-access service drive by which the parcel is already served. Relying on the driveways, banners, and parades act (the driveway act), MCL 247.321 *et seq*., as well as a 1996 VBCRC resolution concerning regulation of controlled access corridors within Van Buren County, the city filed the instant suit for mandamus and other relief, arguing that its compliance with the act and all applicable access management standards mandated that the VBCRC issue the requested permit. The trial court, however, dismissed the suit after concluding that genuine questions of public safety precluded a finding that the VBCRC's actions were arbitrary or capricious, and not a reasonable exercise of its discretion.

II. Analysis

A. Mandamus

The city first asserts that it was entitled to a writ of mandamus and that the trial court therefore erred in granting summary disposition of its claim for mandamus in favor of the VBCRC. We disagree.

To obtain a writ of mandamus, a plaintiff must show (1) that it has a clear legal right to performance of the specific duty sought, (2) that the defendant has the clear legal duty to perform the act requested, (3) that the act sought to be compelled is ministerial and involves no exercise of discretion or judgment, and (4) that no other remedy exists, legal or equitable, that might achieve the same result. *Casco Twp v Secretary of State*, 472 Mich 566, 577, 701 NW2d 102 (2005); see also *Morales v Parole Bd*, 260 Mich App 29, 41-42; 676 NW2d 221 (2003). A clear legal duty subject to mandamus, i.e., a task that is merely ministerial in nature, is one regarding which "the law prescribes and defines the duty to be performed with such precision and certainty as to leave nothing to the exercise of discretion or judgment." *Keaton v Beverly Hills*, 202 Mich App 681, 683; 509 NW2d 544 NW2d (1993) (citation and internal quotation marks omitted). A trial court's decision to grant or deny summary disposition, as well as its determination of the existence and extent of a duty, are subject to review de novo on appeal. *Michigan Civil Rights Initiative v Bd of State Canvassers*, 268 Mich App 506, 514; 708 NW2d 139 (2005); see also *Citizens for Protection of Marriage v Bd of State Canvassers*, 233 Mich App 487, 491-492; 688 NW2d 538 (2004).

The Legislature enacted the driveway act for practical and public safety reasons, see MCL 247.324, and "to regulate driveways . . . , to promulgate rules for the regulation, and to prescribe requirements for the issuance of permits therefor," *Loyer Educational Trust v Wayne Co Rd Comm'n*, 168 Mich App 587, 591; 425 NW2d 189 (1988), citing 1969 PA 200, Statement of Purpose. The act provides in relevant part that "[n]o driveway, banner or parade is lawful except pursuant to a permit issued in accordance with this act unless otherwise provided." MCL 247.322. The act also proscribes the issuance of a permit unless all the requirements of the act and the rules made for the administration of the act are met. MCL 247.326, citing MCL 247.325.

In arguing that it is entitled to a writ of mandamus, the city asserts that nothing in the driveway act, the rules promulgated thereunder, or the VBCRC resolution concerning regulation of controlled access corridors vests within the commission discretion in the grant or denial of a

driveway permit. Rather, the city argues, where a permit applicant has complied with all such rules and has shown that the proposed driveway does not violate the principles of access management, issuance of the requested permit is a ministerial task requiring neither judgment nor discretion. We do not agree, however, that access management decisions are the product of simple formulas involving no discretion or judgment on the part of the highway authority to which the responsibility to issue driveway permits has been delegated. Rather, we agree with the VBCRC that such decisions involve consideration of a number of principles, predicated primarily on public safety, and which can only be applied on a case by case basis.

Indeed, while the driveway act requires that permits be granted in conformity with rules promulgated thereunder, the act also requires that such rules "be consistent with the public safety and based upon the traffic volumes, . . . and the character of the use of land adjoining the highway and other requirements in the public interest." MCL 247. 324. Consistent with this mandate, the access management guidebook commissioned by the state department of transportation "for use by elected and appointed local government officials" in managing access to public roadways under their jurisdiction indicates that such management requires consideration of the unique circumstances presented by each individual request:

> The goal of access management is to achieve a safe and efficient flow of traffic along a roadway while preserving reasonable access to abutting properties.
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> * * *
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> Reasonable access is determined on a case by case basis and depends on all the relevant circumstances. For example, prior to the issue of a driveway permit, or approval of a site plan, driveway locations must be considered in light of potential negative impacts on clear sight distance, traffic at nearby intersections, drainage, road characteristics, volume of traffic and other features. If a proposed driveway location will increase safety hazards in a particular location, but not in another, then the safer location should be the one approved. Where access to property from a local street, alley, front or rear service drive is available, it is usually safer due to lower speeds and traffic volume, and it is more likely to preserve the function of the public road, especially if it is an arterial. In this situation, the driveway connecting to alternative indirect access is preferable. Most often, when indirect access is approved, it is because direct access create a serious traffic concern. [Michigan Department of Transportation, Reducing Traffic Congestion and Improving Traffic Safety in Michigan Communities: The Access Management Guidebook (October, 2001), p 2-1.]

With respect to commercial driveway permits, 1979 AC, R 247.234, promulgated by the state department of transportation under the driveway act, similarly provides that "[t]he department may approve [a] requested [driveway] system or *may require changes in it to insure safe conditions . . . based on anticipated traffic volume on the driveways and on the highway, type of traffic to use the driveways, type of roadside development and other operational considerations*." (Emphasis added). 1979 AC, 247.231(1), also provides that

> [a] driveway shall be so located that no undue interference with the free movement of highway traffic will result. A driveway shall be so located also to

> provide the most favorable vision and grade condition possible for motorists using the highway and the driveway consistent with development of the site considering proper traffic operations and safety.

Consistent with the department of transportation access management guidebook, these rules indicate discretion in the grant of driveway permits based on the unique circumstances of each individual request. Moreover, while the remainder of the rules promulgated by the department set forth a number of general requirements for various aspects of commercial driveway systems and their location, none of these requirements can be systematically applied so as to eliminate the exercise of discretion in the determination whether a proposed driveway meets the overriding concern of public safety. See 1979 AC, R 247.201, *et seq*. Indeed, as acknowledged by the city's traffic operations engineer, Shirley Wolner, the determination whether a requested curb cut is safe requires a combination of both "art and science." Thus, contrary to the city's assertion, the mere fact that Wolner opined that the access requested by the city does not itself violate the state department of transportation access management standards, does not resolve the question whether a safer and more efficient alternative exists. To the contrary, and as essentially acknowledged by Wolner during discovery, resolution of that question requires additional consideration and the exercise of discretion and judgment. Accordingly, we find that the city was not entitled to a writ of mandamus compelling the issuance, as requested, of a driveway permit. *Morales*, *supra* ("mandamus is an extraordinary remedy and it will not lie to review or control the exercise of discretion vested in a public official or administrative body"). The trial court did not, therefore, err in granting summary disposition of the city's request for such a writ in favor of the VBCRC.

B. Procedural and Substantive Due Process

The city also argues that the trial court erred in dismissing its claims for violation of the constitutional guarantee of procedural and substantive due process. Again, we disagree.

The state and federal constitutional guarantees of due process limit governmental action affecting life, liberty, and property. US Const Am XIV; Const 1963, art 1, § 17. In general, procedural due process is a guarantee of fair procedure, *Bevan v Brandon Twp*, 438 Mich 385, 391 n 6; 475 NW2d 37 (1991), while substantive due process requires that government action "be rationally related to a legitimate governmental interest." *Landon Holdings, Inc v Grattan Twp*, 257 Mich App 154, 173; 667 NW2d 93 (2003). "The essence of a claim of violation of substantive due process is that the government may not deprive a person of liberty or property by an *arbitrary* exercise of power." *Id*.

In challenging the dismissal of its claims for due process violations, the city argues that dismissal of those claims was improper because only its claim for mandamus was before the trial court. However, review of the record reveals that although summary disposition of these claims was not expressly requested, both parties addressed the procedural and substantive merits of the VBCRC's actions in their written and oral arguments to the court. The Michigan Rules of Court grant a trial court broad authority to resolve all issues before it. Specifically, MCR 2.116(I)(1) provides that "[i]f the pleadings show that a party is entitled to judgment as a matter of law, or if the affidavits or other proofs show that there is no genuine issue of material fact, the court shall render judgment without delay. Thus, where it is shown that a party is entitled to judgment on a claim as a matter of law, a trial court may grant summary disposition in favor of that party

regardless whether such disposition was sought by the parties. *Id*; cf. *Haji v Prevention Ins Agency, Inc*, 196 Mich App 84,88-90 (1992) (Corrigan, J. concurring) (finding that the trial court erred in sua sponte raising and dismissing suit at trial on legal grounds not previously contemplated by the parties); see also *Mack v Detroit*, 467 Mich 1211; 654 NW2d 563 (2002) (Corrigan, C.J., conurring) (distinguishing *Haji*, *supra*, on the ground that the Court's decision in *Mack* did not result in the injection of a "novel issue").

The city further argues, however, that even were its claims of due process violation properly before the court, summary disposition of those claims in favor of the VBCRC was nonetheless inappropriate. In making this argument, the city asserts that the VBCRC's request for a traffic impact analysis as a prerequisite to review of its permit application was both arbitrary and capricious, as the commission lacked any factual or legal basis for requiring such information. However, as previously noted, the parcel at issue here is already served by a rear-access service drive, and is situated such that extension of that drive to provide additional access to the parcel is, at least physically, possible. Thus, contrary to the city's assertion, there is a factual basis for the requested comparative traffic impact analysis.

Moreover, as also discussed above, the overriding concerns of the driveway act are the practicalities of traffic management and the impact of roadway access on the public safety. *Loyer*, *supra*. To be sure, these are legitimate governmental interests. See, e.g., *Bevan*, *supra* at 399 (public welfare and safety are clearly legitimate governmental interests). Accordingly, the VBCRC's request for additional information and analysis for review was neither arbitrary nor capricious. *Landon Holdings*, *supra*. Indeed, the information requested by the commission, i.e., an analysis of the relative safety and traffic management benefits of the existing rear service drive access to the parcel versus that proposed by the city and the possibility of extending the existing rear service drive, although not expressly required by the driveway act or the existing rules promulgated thereunder, is consistent with the goal of public safety and efficient traffic flow. Moreover, contrary to the city's assertion that the request for such information was arbitrary, its own traffic operations engineer testified at deposition that each of the access alternatives suggested by the parties were "valid access options," but that she could not form an opinion as to the relative merits of any of these options without the information requested by the VBCRC. The city's engineer further indicated that, although she believed that her "access study" provided satisfactory information for the curb cut requested by the city, she nonetheless did not believe that the VBCRC's requests for additional information was "necessarily unreasonable." City of South Haven City Manager Kevin Anderson similarly acknowledged at deposition that it was not inappropriate for a highway authority to request a driveway permit applicant to review a possibly safer alternative for access to a parcel. The trial court did not err in granting summary disposition of the city's claims for procedural and substantive due process violations.[3]

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[3] In reaching this conclusion we note that, given the requirement that each parcel be considered in its own right under the circumstances then present, the mere fact that others may have been granted a driveway permit allowing access to this same county road without having been required to submit a traffic impact analysis is of little probative value to the question whether the

(continued…)

Affirmed.

/s/ Patrick M. Meter
/s/ Joel P. Hoekstra
/s/ Jane E. Markey

(…continued)

VBCRC request for such information from the city was arbitrary or capricious.