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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

REGENCY OUTDOOR ADVERTISING, INC., Plaintiff and Appellant, v. CITY OF WEST HOLLYWOOD, Defendant and Respondent; LHO GRAFTON HOTEL, L.P., Real Party in Interest and Respondent.	B264030 (Los Angeles County Super. Ct. No. BS145706)

APPEAL from a judgment of the Superior Court of Los Angeles County, Robert O'Brien, Judge. Affirmed.

Manatt, Phelps & Phillips, Ronald B. Turovsky and Benjamin G. Shatz, for Plaintiff and Appellant.

Jenkins & Hogin, Michael Jenkins and Gregg W. Kettles, for Defendants and Respondents.

Truman & Elliott, Kathleen O'Prey Truman, Todd Elliott and Russell E. Morse, for Real Party in Interest and Respondent.

Regency Outdoor Advertising, Inc. (Regency) appeals from the denial of its petition for writ of mandate compelling the City of West Hollywood to vacate its 2013 approvals of a zoning map amendment and development agreement permitting real party in interest LHO Grafton Hotel, L.P. (Grafton), which owns and operates a hotel located on the City's Sunset Strip, to erect a billboard atop the hotel. Regency, which had originally filed the application for the billboard as Grafton's authorized representative, contends the City improperly barred Regency from withdrawing its application after Grafton advised the City it was no longer under contract with Regency and wanted to proceed with the application on its own behalf. Regency asserts the City had a mandatory duty to allow it to withdraw the application and violated its own laws when it allowed Grafton to take over Regency's application. The trial court denied the petition on the ground Regency had failed to establish the City had a clear and present ministerial duty to allow Regency to withdraw the application or to bar Grafton from taking over the application, sufficient for mandamus relief under Code of Civil Procedure section 1085.[1] We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Regency's Application To Erect a Billboard on Grafton's Property*

Regency applied to the City in December 2009 for permission to erect a billboard on Grafton's property pursuant to a lease agreement requiring Regency to pay Grafton rent to locate the sign atop Grafton's hotel. The lease authorized Regency to apply for the permit and entitlements, construct the sign, own the sign, find advertisers and receive revenue from those advertisers. As part of the application, Grafton, as owner of the property, executed a City form authorizing Regency, identified as the applicant, to pursue the necessary approvals.

As a first step in processing the application the City gave public notice of its intent to adopt a negative declaration under the California Environmental Quality Act (CEQA), soliciting public comment about the billboard's potential off-site impacts. As

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[1] Statutory references are to this code unless otherwise stated.

contemplated by the lease agreement, Regency paid the costs associated with the City's review of the billboard application. When the application came before the City's planning commission, staff recommended approval through three separate resolutions—one approving a billboard permit, a second adopting a negative declaration and zoning map amendment, and a third approving a development agreement between the City and Grafton that would be recorded against title to the property and would be binding not only on Grafton but also on its transferees and assignees. In June 2011 the planning commission adopted resolutions recommending the city council approve the permit, adopt the negative declaration and zoning map amendment and enter into a development agreement with Grafton.

On July 18, 2011 the city council considered the Regency billboard application, along with three other applications to erect billboards on Sunset Boulevard. The council approved all four billboard applications, including the Regency application. The council also introduced on first reading an ordinance adopting a negative declaration and zoning map amendment, as well as an ordinance approving a development agreement with Grafton.

The four billboard applications came back to the city council on August 15, 2011 for the second reading necessary for final approval of the ordinances. Before the items could be discussed, the city attorney advised the council a resident had threatened litigation over one of the proposed billboards and recommended all four applications be tabled and rescheduled for consideration at a later date. In May 2012, citing the number of pending applications and the continued threat of litigation,[2] the council directed staff to initiate an amendment to the Sunset Specific Plan and to prepare an environmental impact report jointly addressing the active Sunset Strip billboard applications.

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[2] By September 2012 the City had received 13 new applications for off-site signs along Sunset Boulevard, in addition to the seven previously pending applications. An off-site sign is defined as "a sign identifying a use, facility, service or product . . . [that] does not constitute the principal item for sale or manufactured on the premises." (WHMC, § 19.90.020(S).)

2. *The Dispute Between Regency and the Grafton*

In May 2013 LaSalle Hotel Properties, the parent of LHO Grafton (collectively Grafton), notified the City it had not been "under contract" with Regency since 2011 and now wished to represent its own interests to move the application forward. Regency was not copied on the letter. A month later the City advised all billboard applicants that, because the review process would take an additional two years to complete, the four billboard applications that had completed the public hearing process (including the Grafton billboard application) would be placed on the city council's agenda for immediate resolution. Soon thereafter, Regency's counsel notified the City it disputed Grafton's assertion it was no longer under contract with Regency and accused Grafton of attempting to exclude it from the project. Regency contended it remained the applicant and was entitled to be copied on all correspondence between the City and Grafton. Regency also stated its intent to sue Grafton "for breaches of the contract and other misconduct" and requested the City remove its application from the council's agenda, threatening recourse should the City "take any steps to move forward with the application in any way that damages Regency."

Grafton responded by asserting Regency had no extant contractual right to install a billboard at the Grafton and advised the City its previous agreement had "terminated automatically on July 1, 2011, when Regency failed to commence construction of the billboard by that date." Grafton contended the application "automatically reverted" to Grafton as owner and was now "deemed" to be in its name.

On July 25, 2013 Regency notified the City it was withdrawing the application.

3. *The City Decides To Allow Grafton To Proceed with a Corrected Application in Its Own Name*

The billboard applications were placed on the agenda for the August 5, 2013 city council meeting. When advised by the City the Grafton billboard application had been calendared, Regency objected: "We know of no ground whereby a municipality would move forward on a party's application once the party has withdrawn the application. The decision to move forward with the application is all the more improper given that

Regency—as the applicant—was the party that paid all the application costs, negotiated the development agreement terms with [the City], and paid for the studies requested by the City. Moreover, the application was dependent on Regency's billboard plot plans and architectural renderings that were prepared by Regency consultants and are thus proprietary to Regency. Should the City move forward on the application without Regency's consent it would be misappropriating Regency's property for the financial benefit of the City and the Grafton." Regency also argued the City was "favoring the Grafton" and "working against Regency in violation of Regency's rights under the First Amendment." Regency cited no legal authority in support of its position.

Representatives of Regency and Grafton spoke at the city council meeting. The council voted to continue the item to September 16, 2013 to allow the parties to submit additional written materials and authority in support of their positions. The three other Sunset Boulevard billboard applications were approved, subject to final design review.

On September 3, 2013 Grafton filed a "revised and corrected" application on its own behalf, incorporating the identical features of the Regency application. Grafton paid the City application fees totaling $44,580.51 and asked the City to refund all fees paid by Regency. Grafton also offered to reimburse Regency for its third-party expenses associated with the earlier application, excluding attorney fees and costs.

In a written submission to the city council in anticipation of its September 16, 2013 meeting, Regency contended it had an absolute right to withdraw its application under *Jones v. SEC* (1936) 298 U.S. 1, 23 [56 S.Ct. 654, 80 L.Ed. 1015] (*Jones*) and challenged the City's acceptance of Grafton's "revised and corrected" application. Regency asserted Grafton should be required to start the permitting process anew—including CEQA review—rather than be allowed to proceed with the project prepared and negotiated by Regency. Grafton in turn submitted a letter arguing Regency had filed the original application as Grafton's agent and had violated its fiduciary duty to its principal. Grafton, it asserted, was therefore entitled to pursue the original application without Regency.

The staff report prepared for the meeting stated the acceptance of Grafton's application did not constitute a determination which party controlled the application—a question to be answered by the city council—and set forth two options for council action: either conclude the Regency application had been withdrawn and send Grafton's application to the planning commission or allow Grafton to assume control of the application and take action as the council deemed appropriate.[3] The staff recommended the council approve the project, based on the proposed billboard's compliance with City planning goals and a projected income to the City of $2.73 million over the 20-year term of the development agreement.

At the meeting, after the Regency and Grafton representatives had spoken, the city attorney addressed the options available to the council, first noting the City had been placed in the middle of a private dispute but had "no stake one way or the other" in its outcome. Describing both Regency's and Grafton's legal analyses as "somewhat off the mark," he observed that Grafton, and not Regency, was the indispensable party in the process, as the development agreement necessary to the permit is between the City and the property owner and the zoning amendment is an entitlement that runs with the land. He phrased the question before the council in the following manner, "[W]hy would a contract dispute between two parties, as to which the City is not a party and is not involved, control your ability to . . . decide a land use entitlement that is otherwise properly before you? The project is unchanged in every other respect. It is the same project that was reviewed by staff, reviewed and recommended by the Planning Commission, and reviewed here." He questioned Regency's insistence Grafton's application be resubmitted for environmental review when, two years before, Regency had been satisfied with the City's CEQA review. Noting the City's municipal code did

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[3] As a result of the City's earlier decision to subject applications for billboard permits that had not previously cleared planning commission review to an expanded CEQA review, the parties recognized that resubmitting Grafton's application would entail a further two-year delay in approval for a project that had already been pending for three years.

not indicate whether the property owner could replace the applicant at this stage of the proceedings, he advised the council nothing in the Code would preclude such an action or dictate the way in which the council should exercise its discretion. Characterizing Regency's argument as "hyper-technical," he stated his belief the council was free to proceed with the entitlements if it so chose.

As council members stated their views for the record, several noted their concern a vote either way would result in litigation. After extended discussion the project was approved by a four-to-one vote, subject to the same design-review condition imposed on the other billboard applicants. The council also directed City staff to refund all application fees paid by Regency. The ordinances implementing the permit were adopted on second reading on October 7, 2013.

4. *Regency's Lawsuit*

On October 25, 2013 Regency filed this action seeking a writ of mandate pursuant to sections 1085 and 1094.8. Regency also asserted a claim for damages under title 42 United States Code section 1983 based on the violation of its First and Fourteenth Amendment rights, as well as a claim for declaratory relief under federal and state guarantees of free speech and equal protection. Grafton was named in the petition as real party in interest.

Regency alleged the City had "a clear, present, mandatory, nondiscretionary, and ministerial duty" to allow Regency to withdraw its application (or otherwise allow Regency to retain control of it) and no right to allow Grafton to replace it as the applicant. Because the West Hollywood Municipal Code (WHMC) contained no provision allowing Grafton to appropriate the application, Regency alleged the City had acted in violation of its own laws. Alternatively, assuming Grafton had submitted a new application, Regency argued, the City had a duty to process Grafton's application anew and was not entitled to rely on the earlier CEQA and planning commission reviews of Regency's application. Regency asked the court to issue a writ setting aside the ordinances approving the zoning plan amendment and the development agreement.

In support of its free speech claims Regency asserted that operation of a billboard is expressive conduct protected by the First Amendment and that the City's conduct (including comments by certain council members) reflected "content-based favoritism" of Grafton over Regency and resulted in an unconstitutional prior restraint of protected speech.

The City and Grafton answered the petition, and a hearing was set for September 9, 2014. On August 20, 2014 Regency was granted leave to file a supplemental petition alleging the City and Grafton were barred from proceeding with the billboard because Grafton had failed to execute the development agreement authorizing erection of the sign within 30 days as required by WHMC section 19.66.050(B). The hearing on the petition and supplemental petition was continued to February 3, 2015.

5. *The Court Enters Judgment in Favor of the City and Denies Regency's Motion for a New Trial*

The City opposed Regency's petition and supplemental petition on the grounds Regency lacked standing to challenge the City's approval of Grafton's application and the City had discretion to allow Grafton to pursue its application using the approvals already secured with respect to the billboard. At the hearing on the petition the superior court asked Regency to identify a mandatory duty on the part of the City to allow Regency to withdraw the application or to prohibit transfer of the application to Grafton. Regency was unable to identify such a duty. The superior court denied the petition, concluding "writ review is not appropriate here because the City does not have a present, ministerial duty to accept Regency's withdrawal of the Application and no clear duty existed not to substitute Grafton in as the applicant." Whether the City erred by acting without authority to allow Grafton to take over the application was not actionable under section 1085, which requires a violation of a clear, present and ministerial duty for mandamus relief. As to the supplemental petition's allegation the City was required to deem the application withdrawn when Grafton failed to execute the development agreement within 30 days, the court found Regency lacked standing to pursue relief on that ground. The court also denied Regency's section 1094.8 petition asserting the City's

action constituted a prior restraint of Regency's right to free speech on the ground Regency had no interest in the application once it attempted to withdraw it.

Judgment was entered against Regency and in favor of the City and Grafton on February 25, 2015. Regency moved for a new trial challenging the superior court's finding it lacked standing to object to the City's failure to vacate its approval of the billboard when Grafton failed to timely execute the development agreement, an argument Regency claimed had never been briefed. The court denied the motion, finding the standing issue had been sufficiently raised to allow the court to address it.

DISCUSSION

1. *Standard of Review*

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, 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 . . . ." (§ 1085, subd. (a).) The petitioner must demonstrate the public official or entity had a ministerial duty to perform and the petitioner had a clear and beneficial right to performance. (§ 1086; see *Coachella Valley Mosquito & Vector Control Dist. v. California Public Employment Relations Bd.* (2005) 35 Cal.4th 1072, 1084-1086; *Santa Clara County Counsel Attys. Assn. v. Woodside* (1994) 7 Cal.4th 525, 539-540.)

"'A ministerial act is an act that a public officer is required to perform in a prescribed manner in obedience to the mandate of legal authority and without regard to his [or her] own judgment or opinion concerning such act's propriety or impropriety, when a given state of facts exists. Discretion . . . is the power conferred on public functionaries to act officially according to the dictates of their own judgment. [Citation.]' [Citations.] Mandamus does not lie to compel a public agency to exercise discretionary powers in a particular manner, only to compel it to exercise its discretion in some manner." (*AIDS Healthcare Foundation v. Los Angeles County Dept. of Public Health* (2011) 197 Cal.App.4th 693, 700-701 (*AIDS Healthcare*).)

"'The requirement that a petitioner be "beneficially interested" has been generally interpreted to mean that one may obtain the writ only if the person has some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large.'" (*Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 165.) To warrant writ relief "[t]he beneficial interest must be direct and substantial." (*Ibid.*; accord, *Chorn v. Workers' Comp. Appeals Bd.* (2016) 245 Cal.App.4th 1370, 1382 [writ relief is not available if the petitioner "'gains no direct benefit from the writ's issuance, or suffers no direct detriment from its denial'"].)

We independently review the petition to determine whether the petitioner has stated a viable cause of action for mandamus relief. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *AIDS Healthcare*, *supra*, 197 Cal.App.4th at p. 700.) "In reviewing the trial court's ruling on a writ of mandate under Code of Civil Procedure section 1085, the Court of Appeal ordinarily determines whether the court's factual findings are supported by substantial evidence. [Citation.] However, when the facts are undisputed and the issue turns on statutory interpretation, appellate review is de novo." (*Kelly v. County of Los Angeles* (2006) 141 Cal.App.4th 910, 918-919.)

2. *The City Did Not Have a Clear and Present Ministerial Duty To Allow Regency To Withdraw the Application*

a. *The City's billboard permitting scheme*

The governing principles of statutory interpretation are well established and familiar: "Our primary task in interpreting a statute is to determine the Legislature's intent, giving effect to the law's purpose. [Citation.] We consider first the words of a statute, as the most reliable indicator of legislative intent. [Citation.] ""'Words must be construed in context, and statutes must be harmonized, both internally and with each other, to the extent possible.' [Citation.] Interpretations that lead to absurd results or render words surplusage are to be avoided."'" (*Tuolumne Jobs & Small Business Alliance v. Superior Court* (2014) 59 Cal.4th 1029, 1037; accord, *In re D.B.* (2014)

58 Cal.4th 941, 945-946 ["we 'will not give statutory language a literal meaning if doing so would result in absurd consequences that the Legislature could not have intended'"].)

The erection of billboards within the boundaries of the Sunset Specific Plan is strictly regulated by the City: A property owner must apply for a permit that is effected by the City's adoption of a zoning map amendment placing the property within a development agreement overlay district and execution of a development agreement between the City and the property owner governing operation of the sign. (WHMC, §§ 19.14.040, 19.34.080(C) & (F), 19.66, 19.78.)[4] All development applications, including development agreements, must undergo CEQA review. (*Id.*, §§ 19.40.040(F), 19.66.060.)

For each of these actions, the property owner's participation is essential, as the culminating development agreement—the linchpin of a billboard permit—must be executed by the owner to become effective (WHMC, § 19.66.050(A)) and recorded (see *id.*, § 19.66.050(D)). The entitlements associated with the development agreement run with the land. (*Id.*, § 19.62.080.) Consequently, an application for a development agreement may be filed only by the property owner or by a "bona fide representative of the owner." (*Id.*, § 19.66.020(A); see also § 19.78.020 [application for zoning map amendment must be initiated by the property owner].) To verify the status of the "bona fide representative," the City requires the property owner to sign in the presence of a notary an "Owner's Affidavit" attesting the designated representative is indeed authorized to act on the owner's behalf. Application forms require the identification of the property owner if the designated applicant is not the property owner.

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[4] A development agreement is a statutorily authorized agreement between a municipal government and a property owner that allows an owner to make long-term plans for development of the property without risking future changes in the municipality's land use regulations and policies and provides reciprocal benefits for the municipal government. (See Gov. Code, §§ 65864, 65865, 65866; *Mammoth Lakes Land Acquisition, LLC v. Town of Mammoth Lakes* (2010) 191 Cal.App.4th 435, 442-444; *Santa Margarita Area Residents Together v. San Luis Obispo County Bd. of Supervisors* (2000) 84 Cal.App.4th 221, 227.) Government Code section 65867.5 specifies that a development agreement must be adopted by ordinance and is a legislative act.

Once the staff determines the application is complete (WHMC, § 19.40.040(A)), it is submitted to the planning commission for review (*id.*, §19.66.030(A)). The planning commission holds a public hearing and then makes a recommendation to the city council to approve, conditionally approve or deny the application. (*Ibid.*) The entire application is then forwarded to the city council for a further public hearing and final decision. (*Id.* §§ 19.66.020(C); 19.66.030(B), (E).)

b. *The statutory scheme imposed no clear and present duty on the City to allow Regency to withdraw the application*

"In order to construe a statute as imposing a mandatory duty, the mandatory nature of the duty must be phrased in explicit and forceful language." (*Quackenbush v. Superior Court* (1997) 57 Cal.App.4th 660, 663.) As Regency acknowledges, the billboard permitting scheme does not expressly address the circumstances presented here in which the property owner withdraws consent for its representative to pursue the permit application and the representative in turn attempts to withdraw the application. However, it is difficult not to read the scheme to provide—by negative implication—an application may not be controlled (either pursued or withdrawn) by a representative who no longer speaks for the property owner. (See *Spicer v. City of Camarillo* (2011) 195 Cal.App.4th 1423, 1427 ["a statute may express the law by 'negative implication[,]' . . . the unstated but implicitly evident expression of the statute," citing *Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1105]; *Murillo v. Fleetwood Enterprises, Inc.* (1998) 17 Cal.4th 985, 990 [in resolving questions of statutory interpretation, the court "must attempt to effectuate the probable intent of the Legislature, as expressed through the actual words of the statutes in question"; the first step """is to scrutinize the actual words of the statute, giving them a plain and commonsense meaning"""].) Thus, once Grafton revoked its authorization, the City could reasonably conclude Regency lost its right to participate in the permitting process and could not unilaterally withdraw the application or bar Grafton from proceeding with it. In short, there was no mandatory duty, enforceable by a writ of mandate, to allow Regency to withdraw the application.

c. *The City had no clear and present ministerial duty under common law to allow Regency to withdraw the application*

In the absence of a clear statutory mandate, Regency contends well-established case law imposed a duty on the City to allow Regency to withdraw its application. The authority cited by Regency for this proposition—*Jones*, *supra*, 298 U.S. at page 23 [applicant seeking registration under the Securities Act of 1933 has an "absolute" right to withdraw an application in the absence of prejudice] and *McDonald v. State Bar* (1943) 22 Cal.2d 768, 771-773 [applying the rule in *Jones* to allow an applicant to withdraw an application to practice law]—is unconvincing. In *Jones* the United States Supreme Court predicated its ruling on the lack of prejudice to the Securities and Exchange Commission, which had not yet invested "any time or expense" in preparing for the threatened action on the registration application (*Jones*, at p. 20), as well as the absence of any investors who might have been affected by the petitioner's withdrawal of his application: "Under these circumstances, the right of the registrant to withdraw his application would seem to be as absolute as the right of any person to withdraw an ungranted application for any other form of privilege in respect of which he is at the time alone concerned." (*Id.* at pp. 22-23.) In *McDonald* the California Supreme Court relied on this specific language to conclude the State Bar had no interest in ruling on a bar-admission application when the applicant had withdrawn his application after moving out of state. (*McDonald*, at p. 771.) The Court concluded, "In the present proceeding it would appear that any public interest in the matter will be as effectively safeguarded by petitioner's voluntary withdrawal of his application for admission as it would be by a denial on the merits of such application." (*Id.* at p. 772.) By contrast, in this case the City had invested several years in reviewing the application and Grafton had a strong property interest in the application. Rather than support Regency's right to withdraw its application, the *Jones* rule actually supports the City's decision not to allow withdrawal of the application

because of the effort the City had already undertaken in reviewing the project and the adverse effect withdrawal would have had on Grafton.[5]

d. *Regency has failed to establish the City violated its own laws by refusing to allow Regency to withdraw its application*

Relying on *Woody's Group, Inc. v. City of Newport Beach* (2015) 233 Cal.App.4th 1012 (*Woody's*), Regency alternatively contends it is entitled to mandamus relief because the City violated its own laws by refusing to allow Regency to withdraw its application and instead allowing Grafton to take it over. In *Woody's* the Newport Beach planning commission approved a conditional use permit authorizing a restaurant to extend its weekend operating hours and to allow dancing inside the restaurant. Although the City's municipal code permitted appeals only by interested parties who followed strict procedural rules, a city council member informed the city clerk he wanted to appeal the planning commission's decision and argued forcefully against the project when it came before the council. The city council voted to reverse the decision of the planning commission. (*Id.* at p. 1019.) In an accompanying resolution the council asserted the council member's appeal was proper based on the council's long-standing, unwritten policy permitting council members to initiate appeals without complying with any of the procedures required of other appellants. (*Ibid.*) The trial court denied Woody's petition for administrative mandate under section 1094.5 and granted the City's application for an injunction. (*Ibid.*)

The Court of Appeal reversed the trial court's denial of the petition on the ground the City's municipal code contained no provision allowing city council members to appeal actions of the planning commission or otherwise exempting them from the procedural prerequisites for an appeal. (*Woody's, supra,* 233 Cal.App.4th at pp. 1020-

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[5] *Miller v. Board of Police Commissioners* (1960) 181 Cal.App.2d 562 is wholly inapposite. The *Miller* court refused to apply the *Jones* rule to allow two married applicants to withdraw their application to operate a café halfway through the permit proceeding because the applicable ordinance specifically authorized the board to decide the application notwithstanding its withdrawal. (*Miller*, at p. 564.) The court did not address the issue of prejudice to other parties implicated in this case.

1023.) Unlike the case at bar, in which the ordinance does not specify the rule to be followed when a party seeks to withdraw an application because its authorization to represent the property owner has been revoked, the Newport Beach ordinance specified the procedural requirements for an appeal, which the council member did not follow. As Grafton points out, *Woody's* stands for the unremarkable proposition that a city cannot exceed the authority of an existing statutory scheme when the limits of that scheme are explicit: "The Newport Beach Municipal Code clearly does not allow for city council members bringing appeals from city planning commission decisions to—literally—themselves. There is absolutely no provision in the code for an exception for city council members to the code's rules . . . ." (*Woody's, supra*, 233 Cal.App.4th at p. 1026; see *Great Western Sav. & Loan Assn. v. City of Los Angeles* (1973) 31 Cal.App.3d 403, 413 ["[w]here 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"].)

The *Woody's* court also found the council member's actions had created "'an unacceptable probability of actual bias'" (*Woody's, supra*, 233 Cal.App.4th at p. 1022), that was "amplified" when combined with "the related phenomenon of a city violating its own procedure by initiating an appeal to itself." (*Id.* at p. 1023; see *Cohan v. City of Thousand Oaks* (1994) 30 Cal.App.4th 547, 558-559 [writ issued when city council initiated appeal to itself in violation of municipal code and terminated project previously approved by planning commission].)

Regency has failed to demonstrate a similar disregard by the City of West Hollywood for its own laws in this case. The City did not violate any law by approving the billboard project because the project had already been subjected to the City's required environmental and planning review when Grafton advised the City it wished to proceed with the project on its own behalf. While the WHMC did not address specifically how the City should proceed when a property owner sought to substitute itself in place of its representative, the billboard permit scheme required the participation of the property

owner, with or without an authorized representative; and nothing in the Code restricted the City from allowing Grafton to proceed with the project on its own behalf.

In addition, the bias that reinforced the court's analysis in *Woody's* is absent in this case. Although council members favored the project in part because of payments the City expected to receive under the development agreement, their comments do not reveal antagonism toward Regency or prejudgment in favor of Grafton. To the contrary, the comments show the council members' frustration with the likelihood of litigation over what was essentially a dispute between two private parties.[6] The project had been subjected to all necessary phases of review and found to comport with the City's planning goals. The City's accommodation of Grafton's decision to revoke its authorization of Regency as its representative was not a product of bias or prejudgment.

e. *The City has the implied power to implement its laws even when the laws do not specifically address the circumstances presented*

Regency chastises the City for suggesting it has the power to "fill the gaps" in its laws when those laws are silent, but Regency's position is based on the invalid premise a city may never take action not expressly authorized by its municipal code. Such a rule is incompatible with the broad discretion accorded cities to manage their own affairs so long as they do not contravene federal or state law. (See, e.g., *Zack v. Marin Emergency Radio Authority* (2004) 118 Cal.App.4th 617, 633-634 ["municipal corporations possess not only such powers as are expressly conferred on them by the Constitution or statutes, but also implied powers," including "'those reasonably inferred from the powers expressly granted'" and those "'recognized as indispensable to local civil government to enable the municipality to fulfill the objects and purposes for which it was organized and

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[6] California courts have long held that a party alleging bias or prejudice on the part of an administrative decisionmaker must prove those allegations with concrete facts; no such facts were offered here. (See *BreakZone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205, 1237 [discussing cases].) The *Woody's* court was especially attuned to the issue of bias because in reviewing the permit the City was functioning in an adjudicatory rather than a legislative capacity and the council member who appealed the decision of the planning commission not only argued against the permit but also voted against it. (*Woody's, supra,* 233 Cal.App.4th at p. 1021.)

brought into existence'"]; *Gilb v. Chiang* (2010) 186 Cal.App.4th 444, 463 [""[p]ublic agencies possess not only expressly granted powers but also such implied powers as are necessary or reasonably appropriate to the accomplishment of their express powers"""].)

"Implied powers may arise not only by statute [citation], but also under common law rules of statutory construction." (*Zack v. Marin Emergency Radio Authority, supra,* 118 Cal.App.4th at p. 632.) Thus, to the extent the WHMC imposed the requirement that an applicant other than the property owner must be a bona fide representative of the owner, the City was empowered to rely on the negative implication of that requirement to allow Grafton to proceed with the application on its own behalf. (See *Sacks v. City of Oakland* (2010) 190 Cal.App.4th 1070, 1090-1091 ["[a]bsent language in [initiative ordinance] that specified time and manner of execution, we imply reasonable terms and a practical construction of the ordinance"; court will "accord great weight to the administrative agency's interpretation and implementation of the ordinance it was charged with executing"].) Indeed, the City's interpretation and implementation of its laws in this manner is entitled to deference. (See *City of Monterey v. Carrnshimba* (2013) 215 Cal.App.4th 1068, 1091 [a city's interpretation of its own ordinance "'is entitled to deference' in our independent review of the meaning or application of the law"]; *Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, 1193 ["'an agency's view of the meaning and scope of its own [zoning] ordinance is entitled to great weight unless it is clearly erroneous or unauthorized'"].)

3. *Regency Enjoyed Only Limited Standing To Challenge the City's Action*

Even if Regency had a property interest in the prospective sign permit under its original contract with Grafton,[7] its sole role vis-à-vis the City pending permit approval was as Grafton's authorized representative. Accordingly, although we acknowledge Regency's standing to challenge the City's refusal to allow it to withdraw the application

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[7] Regency argues there is no finding in the record to support Grafton's assertion it was no longer under contract with Regency. This argument misses the point: The City was not a party to that contract and was not bound by its terms. The relevant fact for the City was Grafton's revocation of its authorization for Regency to act on its behalf.

it had submitted, it had no other beneficial interest in the outcome of the application process once it lost its status as Grafton's bona fide representative.

Disputing this conclusion, Regency cites *Mola Development Corp. v. City of Seal Beach* (1997) 57 Cal.App.4th 405 to argue it had a beneficial interest in the "process" and "disposition" of its own application that survived the expiration of the lease agreement. In *Mola* a developer whose option to purchase a large parcel of land expired during extended litigation sued the City of Seal Beach for inverse condemnation damages. The court held the developer had lost the right to pursue damages when he dismissed the prerequisite administrative mandamus action, ostensibly because the expiration of his development rights deprived him of standing. (*Id.* at p. 415.) The court observed, "Standing to pursue administrative mandamus is not limited to property owners; instead it applies to persons who have 'undertaken the efforts necessary to secure [regulatory] approvals [and who have] a substantial stake in the project by virtue of those efforts . . . .' [Citation.] Developers have standing even if they have not yet concluded an agreement with the property owner to acquire the site [citation], and even if their contracts with the property owner have terminated or expired." (*Ibid.*) Discussing this point in *County of San Luis Obispo v. Superior Court* (2001) 90 Cal.App.4th 288, where a former property owner who had lost his property to foreclosure sought certificates of compliance for the property under the Subdivision Map Act, Justice Gilbert of Division Six of this district explained, "Such statements may be true enough in the abstract" (*id.* at p. 294; see also *Braude v. City of Los Angeles* (1990) 226 Cal.App.3d 83, 87 ["a writ will not issue to enforce a technical, abstract or moot right"]), but "mandamus can only bring appropriate relief to someone who has an interest in the land subject to the certificates. Because loss of the property by foreclosure prevents the trial court from granting [the petitioner] any relief by administrative mandate, [he] has no standing to maintain his mandamus action. To the extent *Mola* may be read to the contrary, we decline to follow it." (*County of San Luis Obispo*, at p. 295.)

The question here is whether this court can grant Regency any meaningful relief. A writ directing the City to allow Regency to withdraw its application would arguably be

of direct benefit to Regency. Any other order, however, including one determining whether Grafton may proceed with a new application relying on the prior approvals associated with Regency's application, is beyond the scope of Regency's legal interest. (See *Carsten v. Psychology Examining Com. of the Bd. of Medical Quality Assurance* (1980) 27 Cal.3d 793, 797 [board member lacked standing to challenge board's adoption of new testing protocol because she was "neither seeking a psychology license, nor in danger of losing any license; standing available only for "'[o]ne . . . adversely affected by governmental action'"]; *Nowlin v. Department of Motor Vehicles* (1997) 53 Cal.App.4th 1529, 1537 [petitioner "must show his [or her] legal rights are injuriously affected by the action being challenged"].)

The decision in *Gowens v. City of Bakersfield* (1960) 179 Cal.App.2d 282, also cited by Regency, supports this conclusion. In *Gowens* a hotel owner challenged a Bakersfield ordinance requiring hotels to impose a tax on transient guests as unconstitutional. (*Id.* at p. 283.) The Court of Appeal reversed the trial court's finding the hotel owner lacked standing because he was not the person to be taxed; instead, the hotel owner had standing because his "business operations are inextricably interwoven into the operation of the ordinance. Under threat of criminal and civil penalties, he is required to inform his prospective customers of the basis upon which the tax is levied and to collect, record, report and pay the tax to the tax collector." (*Id.* at p. 285.) Regency's business interest in permitting procedures within the City supports its standing as to whether it was entitled to withdraw the application. Those interests do not, however, support standing to challenge the City's approval of the Grafton application.[8]

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[8] Regency also contends it has standing because it owns 30 signs within the City, citing *Summit Media LLC v. City of Los Angeles* (2012) 211 Cal.App.4th 921. In *Summit Media* the court agreed the plaintiff had standing to challenge the City's settlement with two of the plaintiff's competitors allowing those competitors to modify hundreds of signs without complying with City ordinances and found the settlement to be an ultra vires act for that reason. (*Id.* at pp. 933-934.) As Regency acknowledged at oral argument, this precedent supports its standing to challenge the City's actions with respect to its own application and the procedures relied upon for those actions, but would not allow Regency to challenge the disposition of an application filed by a competitor or other

Accordingly, we affirm the trial court's ruling Regency does not have a beneficial interest in the City's decision to waive Grafton's failure to execute the development agreement.

4. *Regency's Section 1094.8 Petition Fails for Lack of Standing; Any Equivalent Free Speech Claim Was Extinguished by Regency's Attempt To Withdraw the Application*

Regency also lacks standing to pursue mandamus relief under section 1094.8. Section 1094.8 authorizes "an action or proceeding to review the issuance, revocation, suspension, or denial of a permit or other entitlement for expressive conduct protected by the First Amendment" and creates expedited procedures for review of those actions. Section 1094.8, subdivision (d)(2), limits those who may bring such an action: "Either the public agency or the permit applicant may bring an action in accordance with the procedure set forth in this section." Regency is neither; consequently, it is not entitled to pursue relief under this section. (See *Stearn v. County of San Bernardino* (2009) 170 Cal.App.4th 434, 440-441.)

Even were we to construe this claim as an additional ground warranting relief under section 1085, it fails. The gist of Regency's claim is that the City, by allowing Grafton to take over its application, improperly suppressed Regency's right of free expression. As the trial court concluded, Regency's attempted withdrawal of the application forfeits this claim. Under any analysis, moreover, the City was not responsible for any infringement of speech, as it was prepared to approve the application and did so. Regency alone is to blame for the loss of its expressive opportunity, which occurred solely because Regency notified the City it was withdrawing its application after Grafton reported it was no longer in a contractual relationship with Regency.

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property owner, including Grafton. In general, standing is not available to pursue a business's competitive interests. (See, e.g., *Driving Sch. Assn. of Cal. v. San Mateo Union High Sch. Dist.* (1992) 11 Cal.App.4th 1513, 1517 [petitioner's competitive interests did not support challenge to school district's policy of charging students for driver training classes].)

DISPOSITION

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

PERLUSS, P. J.

We concur:

ZELON, J.

GARNETT, J.*

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