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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

REGENCY OUTDOOR ADVERTISING, INC., Plaintiff and Respondent, v. CITY OF LOS ANGELES et al., Defendants and Appellants; CLARETT HOLLYWOOD, LLC, Real Party in Interest.	B229213 (Los Angeles County Super. Ct. No. BS121645)

APPEAL from a judgment of the Superior Court of Los Angeles County, Robert O'Brien, Judge. (Retired Judge of the L.A. Sup. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Reversed and remanded with directions.

Carmen A. Trutanich, City Attorney, Kenneth T. Fong, and Kim Westhoff, Deputy City Attorneys for Defendants and Appellants.

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

Elkins Kalt Weintraub Reuben Gartside, John M. Bowman and C.J. Laffer for Real Parties in Interest.

I. INTRODUCTION

Pursuant to ordinance No. 176172, defendant, the City of Los Angeles (the city), operated the Hollywood Signage Supplemental District (the district). The district's purposes included promoting appropriate signage in specified portions of the Hollywood area. Section 9 of ordinance No. 176172 mandated the operation of a sign reduction program. Section 9, subdivision (A) of ordinance No. 176172 permitted an applicant in the district to secure *credits*. Section 9, subdivision (B) of Ordinance No. 176172 permitted owners of four or more signs to receive a *bonus*. As we will discuss, the Ordinance No. 176172, section 9, subdivision (B) bonus provisions have nothing to do with this case. The credits could be used to secure permission to erect a "Supergraphic Sign." Such a sign is one which is applied to, made integral with or projected on a wall as specified. Real Party in Interest, Clarett Hollywood LLC, secured a credit for several signs previously leased to plaintiff, Regency Outdoor Advertising, Inc. Plaintiff then sought credits for the exact same signs. On April 14, 2009, defendant, City of Los Angeles Central Area Planning Commission (the commission), denied plaintiff's application. As will be noted, ordinance No. 176172, as relevant to this case, has been replaced by ordinance No. 181340.

Defendants and Clarett Hollywood, LLC argue all of plaintiff's claims are moot. They also contend the trial court erred in holding that only sign owners are eligible for sign reduction credits under the ordinance. We agree on both counts. Plaintiff's claims as *alleged in its mandate petition* are moot. Even if plaintiff's claims are not moot, they have no merit. We reverse the judgment against defendants and Clarett Hollywood, LLC. Upon remittitur issuance, the trial court is directed to deny plaintiff's mandate petition.

II. BACKGROUND

A. Billboard Leases

The three billboards were on a 7.3-acre piece of property located in Hollywood. In 1998, the former property owner, J. Ned, Inc., entered into three leases with plaintiff. The leases allowed plaintiff to erect and maintain three billboards. The billboard locations and leases were as follows: 6141 Hollywood Boulevard ("6141 Billboard Lease"); 6201 Hollywood Boulevard ("6201 Billboard Lease"); and 6240 Hollywood Boulevard ("6240 Billboard Lease"). Each of the leases had a 10-year term commencing upon construction of the billboard. The leases automatically renewed on a year-to-year basis unless terminated by either party upon written notice. The written notice as to be served on the other party before the end of the 10-year or year-to-year terms. The leases state that plaintiff is the owner of the billboards: "It is agreed between the parties that Lessee shall remain the owner of all advertising signs, structures, and improvements erected or made by Lessee, and that notwithstanding the fact that, the same constitutes real estate fixtures, Lessee shall have the right to remove said signs, structures, and improvements at any time during the term of this Lease, or upon expiration of this Lease. Property tax for Lessee's sign shall be Lessee's sole expense."

B. Hollywood Signage Supplemental Use District

In 2004, the city adopted Ordinance No. 176172 establishing the district. Ordinance No. 176172, section 2 states the ordinance's purposes: "The Hollywood Signage Supplemental Use District is intended to: [¶] A. Provide for the systematic execution of the Hollywood Community Plan and Redevelopment Plan. [¶] B. Promote appropriate and economically viable signage that: [¶] 1. Use clear, attractive graphics; [¶] 2. Coordinates with the architectural elements of the building on which signage is located; [¶] 3. Reflects a modern, vibrant image of Hollywood as the global center of

the entertainment industry; and [¶] 4. Compliments and protects the character-defining features of historic buildings. [¶] C. Limit visual clutter by regulating the number, size, and location of signs. [¶] D. Minimize potential traffic hazards and protect public safety. [¶] E. Protect street views and scenic vistas of the Hollywood Sign and Hollywood Hills. [¶] F. Protect and enhance major commercial corridors and properties."

Under section 5, subdivision (B) of Ordinance No. 176172, billboards are prohibited within the district. Under section 4 of Ordinance No. 176172, a billboard is defined as: "Any sign on one or more poles or columns that: 1. is four feet or greater in height as measured from the natural or finished grade, whichever is higher, to the bottom of the sign, and [¶] 2. is structurally separate from an existing building or other improvement on a lot, and/or [¶] 3. is supported by an independent footing inside an existing building or other improvement on a lot extending through the roof of a building or structure, and [¶] 4. is supporting a sign panel that is attached to the pole(s), post(s), or column(s) and may be cantilevered over a building or structure on the lot."

Ordinance No. 176172 permits other types of signage, including Supergraphic Signs, under specified circumstances. A Supergraphic Sign is defined in Ordinance No. 176172, section 4 as, "A sign, consisting of an image which is applied to and made integral with a wall, or projected onto a wall or printed on vinyl, mesh or other materials, and which does not comply with the provisions of Section 91.6201 et seq. of the Code, relating to wall signs, mural signs, off-site signs and/or temporary signs." Under section 7, subdivision (M)(1)(b) of Ordinance No. 176172, an applicant must participate in the sign reduction program pursuant to section 9 to qualify for a Supergraphic Sign.

Section 9 of Ordinance No. 176172, which sets forth the terms of the sign reduction program, provides in part: "No building permit shall be issued for a new Supergraphic Sign or solid panel portion of an Open Panel Roof Sign within the Supplemental Use District prior to the removal, as evidenced by final inspection and approval of the removal, of legally permitted billboards, solid panel roof signs or pole signs within the Supplemental Use District or the Hollywood Community Plan area,

pursuant to the terms of the sign reduction program . . . . [¶] To apply for the sign reduction program, the applicant shall submit a Project Permit Compliance application with a sign reduction plan to the Director for approval pursuant to Section 11.5.7 of the Code. [¶] A. Terms of Sign Reduction for Approval of A Supergraphic Sign. [¶] 1. Within the Supplemental Use District. [¶] a. Two square feet of a Supergraphic Sign within the Supplemental Use District shall be approved for every square foot of sign face of a legally permitted Billboard and/or Solid Panel Roof Sign, which is at least 672 square feet in size and every square foot of pole sign which is removed from the Supplemental Use District; or [¶] b. One square foot of a Supergraphic Sign within the Supplemental Use District shall be approved for every square foot of sign face of a legally permitted Billboard and/or Solid Panel Roof Sign, which is less than 672 square feet in size and every square foot of pole sign that is removed from the Supplemental Use District. [¶] c. Applicants utilizing the bonus permitted by Subsection B below would be allowed three square feet of Supergraphic Sign for each square foot of sign face of a legally permitted Billboard and/or Solid Panel Roof Sign removed which is at least 672 square feet in size, and 1.5 square feet of Supergraphic Sign for every square foot of sign face of a legally permitted Billboard and/or Solid Panel Roof Sign removed which is less than 672 square feet in size. . . .” As can be noted, section 9, subdivision (A) of Ordinance No. 176172 creates a *credit* system. Once a sign is removed, the applicant receives a square foot of credit. That credit may be applied to a Supergraphic Sign.

Section 9, subdivision (B) of Ordinance No. 176172 permits the applicant to obtain a Supergraphic Sign *bonus*. The bonus may be secured when the billboards or a solid panel roof sign, or a combination of the two varieties of signage are removed. Section 9, subdivision (B) of Ordinance No. 176172 provides in part: “An applicant for a Supergraphic Sign may receive the bonus set forth in Subdivisions 1c and 2c of Subsection A above, by removing all of the Billboards and/or Solid Panel Roof Signs located within a minimum three block area of the Hollywood Community Plan Area. In order to qualify for this bonus a minimum of four Billboards and/or Solid Panel Roof Signs must be removed from the area. Where there are multiple ownerships of Billboards

and/or Solid Panel Roof Signs, the bonus shall be apportioned among the owners according to the square footage of sign faces owned and removed. The Supergraphic Sign rights established under this subdivision may be used on multiple sites provided that each Supergraphic Sign is at least 1,200 square feet in size pursuant to Section 7M3 of this Ordinance." As will be explained, the bonus provisions in section 9, Ordinance No. 176172 subdivision (B) have no application to this case.

Section 9, subdivision (C) of Ordinance No. 176172 provides procedures for granting a Supergraphic Sign bonus once a group of billboards or solid panel roof signs have been removed. Section 9, subdivision (C) of Ordinance No. 176172 states in part: "The owner(s) seeking a Supergraphic Sign Bonus for the removal of a grouping of Billboards and/or Solid Panel Roof Signs shall follow these procedures. [¶] 1. Prior to the issuance of an approval for a Supergraphic Sign Bonus, the applicant(s) shall file an application for approval of the Supergraphic Sign Bonus with the Planning Department on a form prescribed by the Planning Department. The application shall be accompanied by photos and a radius map showing the location of the Billboards and/or Solid Panel Roof signs to be removed. The application shall also show the ownership of the signs to be removed, the square footage of the sign faces to be removed and a scaled diagram of each sign to be removed. The application shall be accompanied by a fee equal to the application fee charged for a "Conditional Use by the City Planning Commission or Area Planning Commissions" pursuant to Section 12.24U, as set forth in Section 19.01 of the Code, to cover the cost of processing the application. [¶] 2. Prior to the issuance of a LADBS permit for a Supergraphic Sign utilizing this bonus, the applicants(s) shall file a covenant, executed and recorded by the applicant(s) and the Department of City Planning. The covenant shall specify the total square footage of Billboards and/or Solid Panel Roof Signs being removed from an individual site and prohibit any future Billboards and/or Solid Panel Roof Signs being located on the site. [¶] 3. The Department of City Planning shall establish and maintain a record of the Supergraphic Sign rights obtained and their use for each applicant pursuant to this subdivision."

C. Ground Lease

On January 25, 2005, Clarett Hollywood, LLC leased the 7.3 acre property (the Hollywood property) pursuant to a 99-year ground lease with Future Hollywood, LLC. Future Hollywood, LLC is the current property owner. Clarett Hollywood, LLC leased the Hollywood property so it could develop a mixed-use project. In connection with the ground lease, Future Hollywood, LLC assigned the billboard leases to Clarett Hollywood, LLC. The 7.3 acre parcel is located entirely within the district.

D. Administrative Proceedings For Clarett Hollywood, LLC's Mix-Use Project And Sign Reduction Program

On July 31, 2007, the city council, pursuant to a zoning variance, approved Clarett Hollywood, LLC's proposed mixed-use project on the Hollywood property. On December 20, 2007, Clarett Hollywood, LLC applied for approval of a sign reduction program consisting of 14 pole and 4 billboard signs in the district. (Only three of the billboards were previously owned by plaintiff.) On March 27, 2008, plaintiff, through counsel, sent a letter to the city's planning director. The letter asserted plaintiff owned the billboards located on the property. The letter asserted Clarett Hollywood, LLC did not have the rights to the sign bonus generated by the billboards' removal.

On April 29, 2008, the city's planning director approved Clarett Hollywood, LLC's sign reduction program application: "An account for the purpose of Sign Banking Reduction Program Credits is hereby established. The account currently contains a sign reduction credit of 12,655 square feet to be utilized for a future Supergraphic Sign for removal of 13 signs located at various locations [on the property]. [¶] No specific project or address is targeted to use the credit at this time. The purpose of this approval is to establish a 'sign bank reduction program account' for the applicant against which tradable sign square footage for future use for a Supergraphic Sign or the solid panel portion of an Open Panel Roof Sign within the Supplemental Use District can be

established and accounted for. Note the sign reduction credit will be reduced to 4.531 square feet, if the applicant chooses to use the sign bank credit for the solid portion of an Open Panel Roof Sign pursuant to Section 9.D of the Ordinance." The planning director also found Clarett Hollywood, LLC's sign reduction program qualified for a sign area credit under section 9, subdivision (B) of Ordinance No. 176172. This is because the approval would lead to the removal of four billboard signs located on three blocks within the Hollywood Community Plan Area. The city's approval of Clarett Hollywood, LLC's sign reduction program became final and effective on May 14, 2008, the last day any party could appeal the approval.

On June 23, 2008, December 5, 2008 and February 27, 2009, Clarett Hollywood, LLC sent letters to plaintiff. The letters notified plaintiff of Clarett Hollywood, LLC's intent to terminate the 6201 Billboard Lease, which was set to expire on April 9, 2009. The first billboard located at 6201 Hollywood Boulevard was removed on March 26, 2009. On February 27, 2009, plaintiff was notified Clarett Hollywood, LLC was terminating the 6141 Billboard Lease, effective March 31, 2009. On the same day, Clarett Hollywood, LLC also sent written notice to plaintiff terminating the 6240 Billboard Lease, effective July 31, 2009. The second billboard located at 6141-53 Hollywood Boulevard was removed on March 26, 2009. The third billboard located at 6240 Hollywood Boulevard was removed on July 31, 2009.

On April 28, 2009, the commission approved Clarett Hollywood, LLC's sign project. Clarett's proposed sign project included seven Supergraphic Signs. The signs ranged in size from 1,200 to 1,976 square feet. The planning director found: "The total square footage of proposed Supergraphic signage is 10,487 square feet. Following the removal of existing billboards and pole signs located on the project site, the project draws upon a banked Supergraphic Sign credit of 12,655 square feet. The project therefore involves 2,168 square feet less Supergraphic signage that could be permitted at the site."

On May 18, 2009, plaintiff appealed the commission's decision to the Los Angeles City Council (the city council). On August 4, 2009, the city council's Planning and Land Use Management Committee heard the appeal. At the hearing, plaintiff argued Clarett

Hollywood, LLC did not have the rights to the sign credit at issue. Rather, plaintiff argued the credit belonged to it as the billboard owner. The Planning and Land Use Management Committee summarized discussions with the planning department staff and city attorney in its report: "In response to the Committee queries regarding City policy, staff from the Planning Department reported that, according to the City Planning Department policy [,] sign credits (Banking Sign Reduction Program Credits) belong to the property owner. The City Attorney advised the Committee that: (1) the underlying approval to Clarett Hollywood, LLC, if the Committee denies the appeal, in no way confer rights to the issuance of sign permits which shall be subject to applicable law of the City at the time an application for a sign permit is made, and (2) there is a lawsuit pending between Regency Outdoor Advertising, Clarett Hollywood LLC, and the City relative to the rightful ownership of the sign credits; and (3) any authorized supergraphic subject to the appeal before the Committee will be awarded consistent with the ruling in that case (court case)." The Planning and Land Use Management Committee recommended the city council deny plaintiff's appeal and approve Clarett Hollywood, LLC's application. On August 12, 2009, the city council adopted the Planning and Land Use Management Committee's recommendation.

E. Administrative Proceedings For Plaintiff's Sign Reduction Program

On September 26, 2008, plaintiff filed an application for approval of a sign reduction program under the ordinance. This was nearly five months after the city planning director approved Clarett Hollywood, LLC's sign reduction program. And this is prior to the leases being terminated and the actual removal of plaintiff's signs. In the application, plaintiff sought the establishment of "an account for purposes of banking sign reduction program credits" in the amount of 12,096 square feet. The application's project description reads as follows, "Remove 6 billboard signs [with a] total of 4,032 [square feet] within [a] 3-block area [and] establish an account resulting [in] 12,096

[square feet] of sign credits." Plaintiff identified itself as the owner/applicant and property owner. Plaintiff included the three billboard leases to demonstrate its ownership of the billboards. Plaintiff's counsel sent letters dated November 19 and December 4, 2008 to Blake Kendrick, a city planning department staff member. Plaintiff's counsel requested the city make a determination and finding on the September 26, 2008 application. The November 19, 2008 letter summarizes plaintiff's counsel's conversation with Mr. Kendrick: "You informed me on or about October 31, 2008, that the Credits for these six billboard signs had already been given to Clarett Hollywood, LLC ("Clarett") in a Project Permit Compliance Determination Letter dated April 29, 2008 . . . . I explained that Regency, not Clarett, is the owner of the billboards, and the law is clear that the sign owner is the party entitled to the credits. . . . [¶] Notwithstanding the above, you stated that Clarett had submitted an application for sign credits and had represented to the City that Clarett owned the billboards, and that the Planning Department had awarded the Credits on that basis. You stated that, while it was your understanding as well that the credits are to be granted to the sign owner, the City has no choice but to rely on the truthfulness of the representations made by the applicant and that the City will not give credits to more than one party."

On December 19, 2008, the planning director disapproved plaintiff's September 6, 2008 application. The planning director stated in his written determination and findings: "The applicant proposes the removal of three (3) double faced billboards. However an account for the purpose of a Sign Reduction Program granting sign reduction credits has already been approved for the removal of these three signs . . . . A Sign Reduction Program may not be established twice for the same sign. Therefore, an additional Sign Reduction Program to establish credits for the removal of these three (3) billboards shall not be granted . . . ." In addition, the planning director found, "[T]he Proposed Sign Reduction Program . . . is inconsistent with the requirements in Section 9 of Ordinance 176172, of the Hollywood Signage Supplemental Use District and therefore denied as filed." The planning director's written decision stated plaintiff had 15 days to appeal the decision. The planning director's written determination was reissued on January 20,

2009, due to a mailing error. On February 4, 2009, plaintiff filed an appeal with the commission arguing, "The law is clear that the owner of the billboards, and not the owner –or in this case the lessee—of the underlying land where the signs may be located, is entitled to the credits."

The city planning department issued a report recommending denial of plaintiff's appeal. In response to plaintiff's contention that it was entitled to the sign credits as the sign owner, the staff report states: "In order to submit and process any land use entitlement, the Department of City Planning requires that the Master Land Use Application contain the signature of the land owner or be signed by an authorized agent and be notarized. Those declarations are made under penalty of perjury. [¶] Clarett Hollywood, LLC (Clarett) and [plaintiff] submitted signed and notarized Master Land Use Applications (along with additional required documentations) for their respective [] Sign Reduction Programs involving the same billboards located at 6141-6153, 6201, and 6240 W. Hollywood Blvd. Clarett submitted their Project Permit application in December 2007 and was approved. [Plaintiff] submitted their Project Application in September 2008. Both applications were accepted and processed by the Department of City Planning. As such, the Department processed both applications accordingly. Clarett's application included their long-term ground lease agreement with the landowner of record. [Plaintiff's] application did not contain authorization from the landowner of record (Future Hollywood, LLC). Land ownership records are the only verification process available to the City. [¶] The Department of City Planning granted the approval of a Sign Reduction Program to Clarett and denied a Sign Reduction Program to [plaintiff]. In good faith, the Department cannot grant to Sign Reduction Programs for the same billboards to two different applicants. If there are private party conflicts, leases, or contracts regarding signs, the Department does not adjudicate those matters. The Department of City Planning will accept an application only if the form contain the required signatures or authorization and will process that application based upon its merits."

In response to plaintiff's argument that the planning department had no legitimate reason to deny the application, the staff report explains: "As with all of other applications accepted by the Department of City Planning, [plaintiff's] application processed in accordance with the Los Angeles Municipal Code and the application's merits. The same rights cannot be granted to two separate applicants. Acceptance of an application does not imply that the requested entitlement will be approved." Also, plaintiff argued it never received notification of the approval of the Clarett Hollywood, LLC application. The staff report responds: "[Plaintiff] is not recognized as any of the parties identified in [Los Angeles Municipal Code Section] 11.5.7C.4b and did not file a written request of interest and therefore would not be notified of any decision related to the properties in question. Property ownership data is taken from the Los Angeles County Tax Assessor data. [Plaintiff] does not hold title to the land and the Department of City Planning does not interpret private leases, contracts or arrangements regarding signage."

The staff report concludes: "The sign reduction program of the Hollywood Signage Supplemental Use District provides incentives to encourage the removal of billboards, which blight the community, and block views of historic buildings, the Hollywood Hills, and the Hollywood Sign. [¶] The Department of City Planning performed its due diligence in evaluating each application submitted for merit and legitimacy based upon the documentation provided. The Department's decision to deny [plaintiff's] appeal is based upon that due diligence, fair evaluation, department policies and accepted planning practice as highlighted in the staff report. The Department cannot grant a Sign Reduction Program and sign credits to two separate entities based upon the same billboards. The Department of City Planning does not intercede in private party matters that may result from private contracts, leases or other sign arrangements."

On April 14, 2009, the commission heard plaintiff's appeal. At the hearing, plaintiff asserted Ordinance No. 176172 required the city to award the sign credits to the sign owner. It also provided evidence that it owned the billboards and that the city had given sign credits in the past to another sign owner, Van Wagoner Outdoor. The

planning department staff opposed the appeal, stating that the sign credits belong to the landowner, not the sign owner. Commissioner Chanchanit Martorell asked about language in Ordinance No. 176172 that support giving the credits to the landowner because the credits run with the land. Kevin Keller, a city planning department staff member, responded: "The application shall show ownership of the signs to be removed. There's no requirement or language about what the Planning Department does with the information, and it has been submitted in front of us and is part of the file, part of the public record." Jordann Turner, another city planning department staff member, explained: "In regard to the credits, they run with the land in the sense of it's a bank, if you will. The credits are established for that particular parcel or parcels and the land owner of that parcel is able to utilize them within the specific plan area. [¶] So in a sense, they do sort of run with the land in a somewhat non-traditional sense that they've banked there as opposed to a land-use entitlement, a traditional land-use entitlement as a development, per se, which obviously can only build on that particular site."

At the conclusion of the hearing, commission President Young Kim stated: "Based on looking at the two specific issues, number one, at this point I don't think it's appropriate for this body to make a determination who is the rightful owner of these credits. The two sides are claiming that they have a rightful ownership to it. You have Clarett, which is basing their rights on the fact that they have a 99-year grant lease—ground lease. [¶] And then we have Regency, who's basing it upon the fact that they had a lease for the fixture, the location, and had a billboard there in place which they claim ownership of. Basically at this point, it's an interpretation of what the sign ordinance requirement is to find who the actual owner is. [¶] Both sides have their arguments, they have their positions. I don't think it's appropriate for this body to make that determination as to who has the actual proprietary rights to make a claim for the sign credits. That, I believe, [is] better determined in a different forum other than this, i.e., the courts. [¶] Issue number two, the intent of the sign district in sign reduction and the banking of credits, the purpose was to eliminate unlawful signs or signs that are no longer legal at that time, and the intent of removing it gave a credit to have it at a different

location to basically keep control over the amount of signage, supergraphic and things." Commissioner Frank Acevedo agreed having the commission define the ordinance was difficult. The commission, unanimously denied the appeal and sustained the planning director's denial of plaintiff's September 26, 2008 application.

F. Judicial Proceedings

On July 17, 2009, plaintiff filed a mandate petition challenging the disapproval of its application for the sign reduction bonus. The petition asserted three claims: the first cause of action was for administrative mandamus for denial of rights under an ordinance under Code of Civil Procedure section 1094.5; the second cause of action was for writ of mandate for denial of rights under an ordinance under Code of Civil Procedure section 1085; and the third cause of action was for writ of mandate for failure to allow reconsideration under Code of Civil Procedure section 1085. The entire petition is premised on defendants' non-compliance with Ordinance No. 176172. On September 4, 2009, Clarett Hollywood, LLC demurred on statute of limitations, res judicata and failure to state a claim grounds. Clarett Hollywood, LLC argued the petition's first two causes of action were barred by the statute of limitations and res judicata and the third cause of action failed to state a cause of action. Defendants joined in the demurrer. The demurrer was overruled on October 29, 2009. The trial court ruled: "Clarett contends that [plaintiff] had no right to appeal the [Central Area Planning Commission's] decision. Clarett takes the position that the gravamen of Petition's first two causes of action is that the City erred when it approved Clarett's application for the Sign Reduction Program, and these claims are barred by [Government Code] section 65009's 90[-day] statute of limitations (or at least by [plaintiff's] failure to seek mandamus within 90 days of its actual knowledge of the Clarett approval). . . . [¶] In effect, Clarett is arguing that the various hearings on [plaintiff's] application and appeal were acts of no legal significance because Clarett's application for sign credits was already in place. [Plaintiff] had a right to apply to the City for credit, had the right to appeal to the [Central Area Planning

Commission], and has the right to challenge the City's decision to deny its application for credits. A challenge of Clarett's approval would not have given [plaintiff] any credits, and approval of [plaintiff's] application would not necessarily have affected Clarett's credits."

The hearing on the plaintiff's petition was held on October 1, 2010. The trial court permitted the filing of additional papers on October 6 and 8, 2010. As will be noted, on October 6, 2010, the city council adopted ordinance No. 181340. On November 17, 2010, ordinance No. 181340 became effective.

On November 23, 2010, after Ordinance No. 181340 became effective, the trial court entered judgment granting a writ of mandate pursuant to Code of Civil Procedure section 1085. The trial court ruled: "The City did not follow the law set forth in Section 9 of the City's Ordinance No. 176172 when it denied [plaintiff's] application for sign credits dated September 26, 2008, No. DIR-2008-3916-SPP (the "Regency Application"). [Plaintiff] is the owner of the signs. Inasmuch as the fundamental reason for the denial of the Regency Application was that the City had given sign credits to Clarett, and inasmuch as that was legally wrong, the City is to consider Regency's Application on the substantive merits, and the City is enjoined from considering Clarett's claim as the proper "owner." On December 9, 2010, the trial court issued a writ of mandate, which states: "The CITY IS HEREBY COMMANDED, immediately, upon service of this writ, and pursuant to the Judgment entered by the Court in this proceeding, to consider [plaintiff's] sign credit application on the substantive merits, and THE CITY IS HEREBY ENJOINED from considering Clarett's claim as the proper "owner."

On December 2, 2010 defendants filed their notice of appeal from the judgment. On January 20, 2011, Clarett Hollywood, LLC timely filed its notice of appeal from the judgment.

III. DISCUSSION

A. Standards Of Review

The petition sought relief under Code of Civil Procedure sections 1085 (traditional mandate) and 1094.5 (administrative mandamus). The trial court granted a writ of mandate under Code of Civil section 1085. We discuss both standards of review.

Code of Civil Procedure section 1085, subdivision (a) provides, "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." A Code of Civil Procedure section 1085 traditional writ of mandate is used to compel the performance of a duty that is purely ministerial in nature or to correct an abuse of discretion. (*Khan v. Los Angeles City Employees' Retirement System* (2010) 187 Cal.App.4th 98, 105; *American Board of Cosmetic Surgery v. Medical Board of California* (2008) 162 Cal.App.4th 534, 547.) Traditional mandamus compels the performance of a clear, present, and ministerial duty where the plaintiff has a beneficial right to performance of that duty. (*Schwartz v. Poizner* (2010) 187 Cal.App.4th 592, 596 quoting *Carrancho v. California Air Resources Board* (2003) 111 Cal.App.4th 1255, 1265.) The Courts of Appeal have described a ministerial act: "'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 own judgment or opinion concerning such act's propriety or impropriety, when a given state of facts exists . . . . ' [Citations.] Thus, '[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.'" (*Schwartz v. Poizner, supra,* 187 Cal.App.4th at pp. 596-597 quoting *Carrancho v. California Air Resources Board, supra,* 111 Cal.App.4th at p. 1267.) Plaintiff has the burden of establishing defendants' decision was arbitrary, capricious, entirely lacking in evidentiary support, unlawful, or procedurally unfair. (*California Correctional Peace Officers Assn. v. State Personnel Bd.* (1995) 10 Cal.4th 1133, 1154; *Khan v. Los Angeles City Employees' Retirement System, supra,* 187

Cal.App.4th at p.106.) This court does not undertake a review of the trial court's findings or conclusions. This is because the trial and appellate courts perform the same function in a traditional mandamus action. (*Khan v. Los Angeles City Employees' Retirement System, supra,* 187 Cal.App.4th at pp.105-106; *Friends of the Old Trees v. Department of Forestry & Fire Protection* (1997) 52 Cal.App.4th 1383, 1393.

In reviewing an agency's decision under Code of Civil Procedure section 1094.5, the trial court determines whether: the agency proceeded without, or in excess of, jurisdiction; there was a fair hearing; and there was any prejudicial abuse of discretion. (Code Civ. Proc. § 1094.5, subd. (b).) Abuse of discretion is established if: defendant has not proceeded in the manner required by law; the order or decision is not supported by the findings; or its findings are not supported by substantial evidence. (*Voices of the Wetlands v. State Water Resources Control Bd.* (2011) 52 Cal.4th 499, 527; *Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 810.) Defendants' findings and actions are presumed to be supported by substantial evidence. (*Desmond v. County of Contra Costa* (1993) 21 Cal.App.4th 330, 335-336; *McAllister v. California Coastal Com.* (2008) 169 Cal.App.4th 912, 921.) Plaintiff bears the burden of showing there is no substantial evidence whatsoever to support defendants' findings. (*Desmond v. County of Contra Costa, supra,* 21 Cal.App.4th at p. 336; *McAllister v. California Coastal Com., supra,* 169 Cal.App.4th at p. 921.) This court applies the substantial evidence test, examining all relevant portions of the entire administrative record. (*Desmond v. County of Contra Costa, supra,* 21 Cal.App.4th at pp. 334-335; *Saad v. City of Berkeley* (1994) 24 Cal.App.4th 1206, 1212.) The trial court's conclusions and disposition of the issues are not conclusive. Both we and the trial court must determine whether the record is free from legal error. (*Alberstone v. California Coastal Com.* (2008) 169 Cal.App.4th 859, 863; *Sierra Club v. California Coastal Com.* (1993) 19 Cal.App.4th 547, 557.)

An ordinance is interpreted by the same rules applicable to statutes. (*Van Wagner Communications, Inc. v. City of Los Angeles* (2000) 84 Cal.App.4th 499, 509 fn. 9; *Carson Harbor Village, Ltd. v. City of Carson Mobilehome Park Rental Review Bd.* (1999) 70 Cal.App.4th 281, 290.) On appeal, we review de novo issues of statutory

interpretation under both Code of Civil Procedure sections 1085 and 1094.5. (*Khan v. Los Angeles City Employees' Retirement System, supra,* 187 Cal.App.4th at p.106 [de novo review of statute under Code Civ. Proc. § 1085]; *Van Wagner Communications, Inc. v. City of Los Angeles, supra,* 84 Cal.App.4th at pp. 505 fn. 5, 510 [de novo review of ordinance under Code Civ. Proc. § 1094.5].) We follow the statutory construction principles discussed by our Supreme Court in *Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735: "Words used in a statute or constitutional provision should be given the meaning they bear in ordinary use. [Citations.] If the language is clear and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature . . . . [Citations.] [¶] But the "plain meaning" rule does not prohibit a court from determining whether the literal meaning of a statute comports with its purpose or whether such a construction of one provision is consistent with other provisions of the statute. The meaning of a statute may not be determined from a single word or sentence; the words must be construed in context, and provisions relating to the same subject matter must be harmonized to the extent possible. [Citation.] Literal construction should not prevail if it is contrary to the legislative intent apparent in the statute. The intent prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit of the act. [Citations.] An interpretation that renders related provisions nugatory must be avoided (*People v. Craft* (1986) 41 Cal.3d 554, 561 []; each sentence must be read not in isolation but in the light of the statutory scheme (*In re Catalano* (1981) 29 Cal.3d 1, 10-11 []); and if a statute is amenable to two alternative interpretations, the one that leads to the more reasonable result will be followed (*Metropolitan Water Dist. v. Adams* (1948) 32 Cal.2d 620, 630-631 []).")

B. Ordinance No. 181340

While this matter was being litigated and before judgment was entered, the city council adopted Ordinance No. 181340. Section 1 of Ordinance No. 181340 states it replaces and supersedes Ordinance No. 176172. Several amendments have a direct effect

on this litigation. Ordinance No. 181340 section 5, subdivision (B)(11) bans any Supergraphic Signs. Ordinance No. 181340, section 6, subdivision (K)(1) sets forth exceptions for the Supergraphic Signs ban: a building permit was issued for a sign supporting structure and substantial work preformed or liabilities were incurred; a vesting tentative map issued under specified circumstances; or a development agreement was executed.[1] In addition, Ordinance No. 181340, section 6, subdivision (K)(2) provides that the prohibition against Supergraphic Signs does not apply where a project approval for their erection was issued prior to November 12, 2008.[2] Previously earned credits under Ordinance No. 176172, section 9 subdivision (A)(1) could be used for signage which was permitted under No. 181340, section 6, subdivision (K)(1) and (2).[3]

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[1] Ordinance No. 181340, section 6, subdivision (K)(1) states: "**Vested Rights Under California Law**. [¶] The prohibition of Supergraphic Signs in this Ordinance shall not apply to any development that is vested under California law. A development is vested under California law if: [¶] a. Prior to the effective date of this ordinance, a building permit for Supergraphic Signs or Supergraphic Sign structures has issued and substantial work has been performed and Substantial liabilities have been incurred in good faith reliance on the building permit; [¶] b. A vesting tentative map is ultimately approved, but only if: (1) the application materials and/or the environmental review documents for the tentative map reflect that the development includes the installation of Supergraphic Signs; and (2) the application for the vesting tentative map was deemed complete during the time in which City law authorized the installation of Supergraphic Signs pursuant to the regulations set forth in the prior Hollywood Signage SUD, Ordinance No. 176172; or [¶] c. A development agreement is executed for a development including Supergraphic Signs during the time in which City law authorized the installation of Supergraphic Signs pursuant to the regulations set forth in the prior Hollywood Signage SUD, Ordinance No. 176172."

[2] Ordinance No. 181340, section 6, subdivision (K)(2) states: "**Grandfather Rights For Previously Approved Developments.** The prohibition of Supergraphic Signs in this Ordinance shall not apply to developments where a Project Permit Approval for Supergraphic Signs was granted on or before November 12, 2008, or where a Sign Covenant Agreement concerning Supergraphic Signs was approved by the Community Redevelopment Agency Board on or before November 12, 2008."

[3] Ordinance No. 181340, section 6, subdivision (K)(3) states: "**Use of Sign Bank Reduction Program Credits.** Sign Bank Reduction [¶] Program credits obtained prior to the effective date of this Ordinance may be used for developments that are

None of these exceptions to the Supergraphic Signs ban and the severely circumscribed use of credits applies to this case. The entire mandate petition involves plaintiff's rights to credits under Ordinance No. 176172, section 9, subdivision (A) in order to erect a now banned sign. The express purpose of Ordinance No. 181340 is to supersede portions of Ordinance No. 176172. Plaintiffs have had the opportunity to seek judicial notice of papers which indicate some issue remains for resolution which relates to credits or a bonus to erect a Supergraphic Sign. *(In re Zeth S.* (2003) 31 Cal.4th 396, 413; Code Civ. Proc., § 909; Cal. Rules of Court, rule 8.252.) No such evidence is present has been proffered. Further, there is no evidence of bad faith such as to requires the application of the provisions in Ordinance No. 176172 permitting the erection of Supergraphic Signs. (*Selby Realty Co. v. City of San Buenaventura* (1973) 10 Cal.3d 110, 125; *Russian Hill Improvement Assn. v. Board of Permit Appeals* (1967) 66 Cal.2d 34, 37, fn. 5.) The pertinent law changed prior to the entry of judgment and none of the lawyers, even defense counsel, knew the relevant portions of Ordinance No. 176172 were abrogated. Thus, the weight of the evidence indicates plaintiff's contentions are moot. (*Paul v. Milk Depots, Inc.* (1964) 62 Cal.2d 129, 133-134; *MHC Operating Limited Partnership v. City of San Jose* (2003) 106 Cal.App.4th 204, 214; *Equi v. San Francisco* (1936) 13 Cal.App.2d 140, 141-142; *Sierra Club v. Board of Supervisors* (1981) 126 Cal.App.3d 698, 704; see *Lee v. Gates* (1983) 141 Cal.App.3d 989, 993.)

C. Defendants Did Not Abuse Their Discretion In Applying Section 9, Subdivision (A) Of Ordinance No. 176172

Even if plaintiffs' contentions are moot, no abuse of discretion has been demonstrated. Section 9 of Ordinance No. 176172 permits an applicant to submit a project permit compliance application with a sign reduction program to the planning director. In this manner, an applicant seeks approval to obtain a sign credit or bonus for

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grandfathered under this section. Otherwise, such credits may not be used to install a sign that is prohibited by this Ordinance."

Supergraphic Signs. Section 9, subdivision (A) of Ordinance No. 176172 states: "(1) a. Two square feet of a Supergraphic Sign within the Supplemental Use District shall be approved for every square foot of sign face of a legally permitted Billboard . . . , which is at least 672 square feet in size and every square foot of pole sign which is removed from the Supplemental Use District; or [¶] b. One square foot of a Supergraphic Sign within the Supplemental Use District shall be approved for every square foot of sign face of a legally permitted Billboard . . . , which is less than 672 square feet in size and every square foot of pole sign that is removed from the Supplemental Use District. [¶] c. Applicants utilizing the bonus permitted by Subsection B below would be allowed three square feet of Supergraphic Sign for each square foot of sign face of a legally permitted Billboard . . . removed which is at least 672 square feet in size, and 1.5 square feet of Supergraphic Sign for every square foot of sign face of a legally permitted Billboard . . . removed which is less than 672 square feet in size. . . . "

Section 9, subdivision (A) of Ordinance No. 176172 does not specify that the applicant must be the sign owner. Rather, under section 9, subdivision (A) of Ordinance No. 176172, an applicant who *removes* a legally permitted billboard is allowed the specified sign credits. Here, Clarett Hollywood, LLC was eligible to apply for the sign reduction program under section 9 of Ordinance No. 176172 because it removed plaintiff's billboard by terminating the three billboards leases. Clarett Hollywood, LLC did so by notifying plaintiff in letters dated June 23 and December 5, 2008 and February 27, 2009 of the billboard leases termination. The three billboards were subsequently removed. The first billboard located at 6201 Hollywood Boulevard was removed on March 26, 2009. The second billboard located at 6141 Hollywood Boulevard was removed on March 26, 2009. The third billboard located at 6240 Hollywood Boulevard was removed on July 31, 2009. Section 9, subdivision (A) of Ordinance No. 176172 does not limit the eligibility of the credits to only sign owners. Thus, without abusing their discretion, defendants properly grant sign credits to Clarett Hollywood, LLC for its sign reduction program. When plaintiff applied for the credits, defendants had already awarded them to Clarett Hollywood, LLC. Therefore, defendants did not abuse their

discretion in denying plaintiff's application for sign credits for the same three billboards. One stated purpose of ordinance No. 176172 is to limit visual clutter by regulating the number, size and location of signs in the district. It would contravene this explicit purpose of Ordinance No. 176172 to award sign credits twice for the same three signs.

Further, section 9, subdivision (B) of Ordinance No. 176172 discusses billboard ownership in connection with a Supergraphic Sign bonus for removal of at least *four* billboards from a designated area. Section 9, subdivision (B) of Ordinance No. 176172 states: "An applicant for a Supergraphic Sign may receive the bonus set forth in Subdivision[] 1c . . . of Subsection A above, by removing all of the Billboards . . . located within a minimum three block area of the Hollywood Community Plan Area. In order to qualify for this bonus a minimum of four Billboards . . . must be removed from the area. Where there are multiple ownerships of Billboards . . . , the bonus shall be apportioned among the owners according to the square footage of sign faces owned and removed. The Supergraphic Sign rights established under this subsection may be used on multiple sites provided that each Supergraphic Sign is at least 1,200 square feet in size pursuant to Section 7M3 of this Ordinance." Under section 9, subdivision (B), only billboard owners who can remove a minimum of four billboards are eligible for the Supergraphic Sign bonus.

Here, it is undisputed plaintiff was the owner under the three billboard leases. Plaintiff is not eligible for the Supergraphic Sign bonus because it owned and removed only three billboards with six sign faces. A billboard is defined under section 4 of the ordinance as, "Any sign on one or more poles or columns that: 1. is four feet or greater in height as measured from the natural or finished grade, whichever is higher, to the bottom of the sign, and [¶] 2. is structurally separate from an existing building or other improvement on a lot, and/or [¶] 3. is supported by an independent footing inside an existing building or other improvement on a lot extending through the roof of a building or structure, and [¶] 4. is supporting a sign panel that is attached to the pole(s), post(s), or column(s) and may be cantilevered over a building or structure on the lot." Section 9, subdivision (B) requires the removal of at least *four* billboards by an owner located

within a minimum three block area of the Hollywood Community Plan Area. Only three billboards once owned by plaintiff were removed. Thus, defendants did not abuse their discretion in denying plaintiff's application for the credits or a bonus under the reduction program. Having concluded defendants could properly deny plaintiff's sign credit and bonus application, we do not discuss the parties' other arguments.

IV. DISPOSITION

The November 23, 2010 judgment is reversed. Upon remittitur issuance, the trial court is to enter judgment denying the mandate petition. Defendants, the City of Los Angeles and its Central Area Planning Commission, and real-party-in-interest, Clarett Hollywood, LLC, shall recover their appeal costs from plaintiff, Regency Outdoor Advertising, Inc.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

TURNER, P. J.

I concur:

KRIEGLER, J.

MOSK, J., Dissenting

I dissent. I would dismiss the appeal as being moot.

The replacement of Ordinance No. 176172, which provided for the sign credits in issue, with Ordinance No. 181340 renders the issue moot in this appeal. (See 9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 754, pp. 820-821.) This court cannot grant effectual relief. (*Consolidated Vultee Aircraft Corporation v. United Automobile, Aircraft and Agricultural implement Workers* (1946) 27 Cal.2d 859, 863; see *Vernon v. State of California* (2004) 116 Cal.App.4th 114, 120-121.) There is no authority that mootness can be waived.

The trial court concluded that the City had denied Regency's application for sign credits improperly. The trial court ordered the City to "consider [plaintiff's] sign credit application on the substantive merits." But the City had already found the signs eligible for the credits (in connection with Clarett's application), and there is no dispute that Regency owned the signs. Having fulfilled the requirements for the sign credit, under Regency's interpretation of the Ordinance, the City had no discretion—its duty is mandatory. Thus, if Regency's position is correct, it was wrongfully deprived of sign credits.

Under the new ordinance, Regency, however, can only use the credits for Supergraphic Signs "where a Project Permit approved for Supergraphic Signs was granted on or before November 12, 2008." (Ordinance No. 183140, § (6)(K)(2).) The credits may be used "for developments that are grandfathered under this section. Otherwise, such credits may not be used to install a sign that is prohibited by this Ordinance." (Ordinance No. 183140, § (6)(K)(3).)

Ordinance No. 181340 also eliminates the sign reduction program set forth in section 9 of Ordinance No. 176172 because it supersedes that prior ordinance. (§ 1.). Again, the grandfather clause appears to allow credits only for developments that are grandfathered. The grandfather clause only applies to developments when a Supergraphic Sign had been approved on or before November 12, 2008. (Ordinance No.

183140, § K(2) and (3).) Admittedly, the clause is somewhat ambiguous. Subsection (3) states as follows: "Sign Bank Reduction Program Credits obtained prior to the effective date of this Ordinance may be used for developments that are grandfathered under this section. Otherwise, such credits may not be used to install a sign that is prohibited by this Ordinance." One could read this provision as meaning that sign credits could be used for a sign not prohibited by the Ordinance. But there is no provision for the sign credits or how they might be used in the new ordinance—Ordinance No. 176172 having been superseded. As subsection (K) of Ordinance No. 181340, the "Grandfathering Exception," only seems to discuss Supergraphic Signs, it seems that the use of sign credits referred to in (K)(3) deals only with Supergraphic Signs for approved developments referred to in (K)(2).

Thus, Regency cannot use whether credits it has, unless for a Supergraphic Signs for an already approved development. There is no indication that there is any such development.

I would not reach the appealability issue and other issues related to the merits of the claims on appeal. I note that Regency may not have been entitled to the Supergraphic Sign Bonus, but that does not mean it was not entitled to sign credits under the sign reduction program in section 9 of Ordinance No. 176172.

As the appeal is moot because under the new ordinance Regency could not use sign credits, the trial court's writ can be of no effect. I would dismiss the appeal.

MOSK, J.