Filed 4/18/12 Holmby-Westwood Traffic Committee v. City of Los Angeles CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

HOLMBY-WESTWOOD TRAFFIC COMMITTEE et al., Plaintiffs and Respondents, v. CITY OF LOS ANGELES et al., Defendants and Appellants.	B228570 (Los Angeles County Super. Ct. No. BC446755)
STRUMWASSER & WOOCHER, LLP, Intervenor.	

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

Carmen A. Trutanich, City Attorney; Terry P. Kaufman Macias and Lisa S. Berger, Deputy City Attorneys, for Defendants and Appellants.

Rosenburg & Koffman and Ronald G. Rosenburg, for Plaintiffs and Respondents.

Strumwasser & Woocher, Fredric D. Woocher and Beverly Grossman Palmer, for Intervenor.

INTRODUCTION

The Holmby-Westwood Traffic Committee and two Westwood residents filed a petition for a writ of mandate requiring the City of Los Angeles (City) to comply with a traffic management plan that had been drafted pursuant to a condition of approval for a development project. Petitioners alleged that the plan was a binding contract obligating the City to install various traffic restrictions in the Westwood area of Los Angeles. The City argued that it was not bound by the plan because the Department of Transportation had never approved it. The trial court granted the petition and awarded petitioners approximately $150,000 in attorneys' fees. The City filed a timely appeal. We reverse.

FACTUAL AND PROCEDURAL BACKGROUND

A. Events Preceding the Filing of the Petition for Writ of Mandate

1. The 2007 Neighborhood Protection Plan

In August of 2004, the Los Angeles City Council approved a site plan for a proposed development known as the "Palazzo Westwood project." The site plan required the owner of the property, Casden Glendon LLC, to comply with several "Conditions of Approval," including the development of a "Neighborhood Protection Plan" that would address potential increased traffic caused by the Palazzo project. Condition of Approval Number 19 required that "Prior to the issuance of any certificate of occupancy, the owner shall submit a Neighborhood Protection Plan, including funding, for approval by the Department of Transportation . . . and the Department of City Planning, which shall help control against the intrusion of project related traffic into local residential neighborhoods." Condition 19 further required that the Neighborhood Protection Plan was to "be developed in consultation with LADOT, the Department of City Planning, the applicable Council District office, and neighborhoods in the project vicinity. . . . The Plan shall be submitted for approval prior to any application for a building permit and approved before any permit is issued. Final approval of the Plan shall be authorized by the General Manger of LADOT and the Director of Planning, subject to possible

revisions deemed necessary for traffic management and safety purposes and compliance with applicable traffic and parking regulations."

In 2007 Casden submitted a Neighborhood Protection Plan (NPP) that was approved by the Los Angeles Department of Transportation (LADOT) and the Department of City Planning (DOP).[1] The introduction to the NPP stated that the "traffic impact analysis certified in connection with the Environmental Impact Report prepared for the Palazzo Westwood project . . . did not identify any potential project-related significant impacts to any of the neighborhood streets surrounding the project site. As such it is unknown at this time whether impacts will exist and if so, what specific improvements will be necessary to address community concerns." In describing the specific elements of the plan, the NPP stated that because no significant project-related impacts were identified in the project traffic study, the "Plan will initially consist of a traffic monitoring program undertaken by a traffic counting firm retained by Casden. . . ." The monitoring program, which was to continue for five years, required Casden to measure traffic at various intersections near the project site and report its findings to LADOT.

The NPP further provided that, "[s]hould the monitoring report(s) identify that significant project-related traffic impacts . . . occur to any of the . . . monitoring intersections . . . Casden shall identify and implement appropriate traffic control measures to address the impacts. The measures appropriate to the specific, significant project traffic related impacts will be developed by Casden . . . in consultation with neighborhood organizations representing the potentially affected communities . . . and will be subject to review by the [LADOT]." The NPP also stated that the "Director of Planning and the General Manager of LADOT (or their designees) shall have the final approval authority with respect to [any traffic control measures]," which "may include . . . traffic diverters, . . . chokers, turn prohibitions, speed humps, signage or a

[1] Neither party disputes that LADOT and DOP approved the NPP in the manner required under the Conditions of Approval.

combination of measures. . . . [¶] If . . . such mitigation is deemed necessary based on the results of the monitoring data, it is anticipated that the traffic calming measures described above would be installed at up to three locations, including Hilgard Avenue and Le Conte Avenue, Hilgard Avenue and Weyburn Avenue and Lindbrook Drive and Malcolm Avenue."

The NPP also mandated that Casden fund the traffic study by providing an irrevocable letter of credit to the LADOT in the amount of $180,000.

2. The 2008 Amendment to the Neighborhood Protection Plan

Although the NPP included a statement indicating that it had been drafted in consultation with "neighborhoods in the project vicinity," some residents felt that the plan had been adopted "without the affected community's input." To remedy this alleged oversight, the Holmby-Westwood Homeowners Association and other residents entered into negotiations with the City and Casden to amend the NPP in a manner that would require the immediate implementation of various temporary traffic calming measures.

During the pendency of those negotiations, the City Council considered a petition from the Holmby-Westwood Homeowners Association (the Homeowners Association) requesting a "trial of the implementation of temporary traffic calming measures" related to the Palazzo Westwood project. The petition requested the installation of three temporary traffic measures: "(1) No eastbound and westbound straight through traffic on Le Conte Avenue across Hilgard Avenue; (2) No eastbound and westbound straight through traffic on Weyburn Avenue across Hilgard Avenue; and (3) No. . . left-turn traffic from Hilgard Avenue to Lindbrook Drive." These proposals were intended to "reduce the existing and anticipated level of non-residential, cut-through traffic on the residential streets" near the Palazzo project.

Jack Weiss, Councilmember of the Fifth District, submitted a motion to approve the petition. The motion required LADOT to "implement the traffic calming measures described above and any other necessary, related traffic calming measures for a trial period of no more than six months." The motion also directed LADOT to "evaluate the effectiveness and impact of these traffic calming measures, to evaluate the level of

community support, and to determine if the traffic calming measures and any other necessary, related traffic calming measures should be made permanent." The motion authorized the LADOT to expend $50,000 from a neighborhood transportation management fund to implement the measures. The City Council approved the motion on January 23, 2008 (the January motion), and the LADOT implemented the three temporary traffic restrictions in February of 2008.

Approximately three months later, on May 14, 2008, the DOP, Casden and Homeowners Association signed a document entitled "Neighborhood Protection Plan Amendment Palazzo Westwood Project" (the 2008 Amendment). Although the LADOT participated in drafting the 2008 Amendment, the document did not contain a signature line for the agency. The document did, however, state that the Amendment had been "reviewed to the satisfaction of the [LADOT]."

The introduction of the 2008 Amendment stated that "the DOP, Casden and the neighborhoods in the project vicinity . . . . ha[d] arrived at a consensus that the [NPP] should be amended to expedite and provide greater certainty with respect to the implementation of measures to help control against the intrusion of traffic . . . ." The Amendment noted that it was being adopted pursuant to Condition 19 of the site plan: "Condition No. 19 of the Site Plan Conditions of Approval provides that the Plan is 'subject to possible revisions deemed necessary for traffic management and safety purposes . . . .' In accordance with Condition No. 19, the Parties hereby agree to revise the plan in its entirety through adoption of this Amendment . . . for the purpose of expediting improved traffic management measures . . . ."

To accomplish those goals, the Amendment required the LADOT to temporarily implement the same three traffic restrictions the City Council had approved in the January motion.[2] As with the January motion, the Amendment also provided that the

[2] As with the January motion, the 2008 Amendment contained the following three prohibitions: (1) no straight through traffic on Le Conte Avenue across Hilgard Avenue; (2) no straight through traffic on Weyburn Avenue across Hilgard Avenue; and (3) no left-turn traffic from Hilgard Avenue on to Lindbrook Drive. However, the Amendment

traffic restrictions would remain in place for "a trial period of six months" and authorized LADOT to pay for the improvements "with $50,000 . . . from the Neighborhood Transportation Management Fund."

However, unlike the City Council's January motion, which gave LADOT discretion to determine whether to permanently implement the traffic measures, the Amendment included detailed instructions describing how LADOT was to make that determination. The Amendment directed that, following the six month trial period, LADOT was to mail a survey to all households within the "Affected Areas." The geographic scope of the Affected Areas was defined in Exhibit A to the Amendment. If 40 percent of households in the Affected Areas participated in the survey, and 66.7 percent or more approved of the traffic measures, the measures would be deemed successful and implemented on a permanent basis.

The Amendment permitted LADOT to expand the geographic scope of the "Affected Areas" if certain conditions were met. Specifically, the Amendment provided that "[t] the geographical scope of the Affected Areas, for the purpose of the above poll . . . may be expanded by LADOT to include residential areas . . . listed in Exhibit C if such residential areas are deemed significantly impacted (according to LADOT criteria for significance) by the Plan Amendment after one-time traffic counts. . . ."

The Amendment required LADOT to release the $180,000 letter of credit that Casden put in place pursuant to the 2007 NPP. It further required Casden to issue a new letter of credit for $80,000, which would be used to pay for the traffic survey and, if necessary, to make the temporary traffic restrictions permanent.

3. The LADOT survey

On January 28, 2009, LADOT sent out a survey to households in the Westwood community asking them to vote on a "Neighborhood Traffic Management Plan" (NTM

---

also provided that, to discourage left turns from Hilgard Avenue, LADOT would install temporary "sidewalk bumpouts" and a "median island" on Lindbrook Drive. It is unclear whether the bumpout and median requirements appeared in the January motion or whether the LADOT ever implemented them.

Plan) consisting of five different elements. The first three elements consisted of the temporary traffic restrictions put in place under the City Council's January motion, which were the same restrictions referenced in the 2008 Amendment. The other two elements of the NTM Plan included proposed speed bumps and four way traffic control systems. The latter elements were not included in the City Council's January motion or the 2008 Amendment.

A letter accompanying the survey explained that the "NTM Plan was developed in response to concerns raised by [the Homeowners Association] about the potential for additional cut-through car trips related to the Palazzo Westwood development. . . . The Palazzo Westwood developer has agreed to provide funds to implement the traffic calming measures in the NTM Plan, if approved, to help control cut through traffic intrusion into the neighborhood." The letter also explained that LADOT would use the survey results to determine whether there was sufficient community support to approve the NTM Plan on a permanent basis. According to the letter, LADOT would deem the community to have approved the NTM Plan if at least 40 percent of the households returned the survey, and at least two-thirds of the survey forms approved of the Plan.

The survey included information showing how the temporary traffic measures had affected car counts on certain streets in the Westwood area. The counts showed that the daily number of cars on Lindbrook Drive and Le Conte Avenue had dropped by almost 24 percent and 125 percent respectively, while the daily number of cars on Weyburn Avenue and Manning Avenue had increased by approximately 20 percent.

In early March 2009, LADOT posted the results of the survey, which showed that almost 75 percent of households had returned their ballots, but only 59 percent had approved of the measures. Because fewer than two-thirds of the respondents approved the measures, the LADOT recommended that the City Council remove the temporary traffic calming measures.

The City Council Transportation Committee issued a report recommending that the Council approve LADOT's removal request. The report explained that "[t]he LADOT installed the temporary measures in February of 2008 and then evaluated the

effectiveness and impact of the traffic calming measures. Based on the technical evaluation and consultation with the community and Council District Five, LADOT finalized a proposed Neighborhood Traffic Management Plan. The plan consisted of the [the traffic restrictions listed in the January motion], as well as speed humps and all-way stop control at specific locations. [¶] . . . The LADOT's policy for determining whether traffic restrictions should be implemented includes a consideration for whether there is a super-majority community support for such restrictions. Hence, at the request of LADOT, the City Clerk's Office mailed out opinion survey forms and related information to every residence within a designated affected area, asking if the occupants support the proposed NTM Plan. Based upon the responses returned to the City Clerk, LADOT has determined the implementation of permanent restrictions did not meet LADOT established thresholds for community support."

The City Council approved the Transportation Committee report on May 22, 2009, directing LADOT to remove the temporary traffic measures.

B. Petition for Writ of Mandate

1. Summary of allegations in petition for writ of mandate

On May 29, 2009, the Holmby-Westwood Traffic Committee, Esther Magna and Phillip Gabriel, who were both residents of Westwood (collectively petitioners)[3], filed a petition for writ of mandate and complaint for injunctive relief alleging that the City of Los Angeles had a mandatory duty to permanently implement the temporary traffic measures described in the 2008 Amendment. The petition asserted that the City breached the 2008 Amendment, which petitioners described as a "written contractual agreement," by sending out the traffic survey to a broader scope of households "than that specified in

[3] The petition describes the Holmby-Westwood Traffic Committee as an "unincorporated association and ad hoc committee of the Holmby Westwood Property Owners Association." It is unclear from the record whether the Holmby-Westwood Property Owners Association is different from the Holmby-Westwood Homeowners Association, which is the name of the group that signed the 2008 Amendment. Although the parties have not addressed the issue, their briefs appear to refer to the Property Owners Association and the Homeowners Association interchangeably.

the Neighborhood Protection Plan." More specifically, petitioners alleged that "when the LADOT distributed the survey called for by the [2008 Amendment], it unilaterally expanded the survey area to include households that were located *more than half a mile* from the defined Affected Areas. . . . By enlarging the survey area in this manner, the LADOT effectively *doubled* the number of households who were permitted to vote on the success of the [temporary traffic measures], impermissibly diluting the votes of those residents within the defined Affected Areas. . . ."

The petition further alleged that more than two-thirds of households within the "Affected Areas" had approved the traffic measures and that "the only reason that the [temporary traffic measures] . . . failed to gain the support of more than 66.7 percent of the respondents in the . . . survey was because LADOT impermissibly enlarged the survey area . . . ." Therefore, according to the petition, "[h]ad LADOT properly confined its survey to the defined Affected Areas identified in the 2008 NPP . . . the [temporary traffic measures] would have been deemed successful by virtue of having received the approval of the requisite 66.7 percent supermajority support of those actually entitled to vote on the question."

The petitioners' pleading included two causes of action: a writ of mandate claim (see Code Civil Proc., § 1085) and a breach of contract claim. The writ of mandate claim asserted that the City had "clear, present and ministerial obligations under the terms of the duly adopted [2008 Amendment] . . . [that] require [the City] to install and implement on a permanent basis the traffic control measures that have been installed on a temporary basis . . . based upon the approval of the [temporary traffic measures] by more than 66.7 percent of the households in the defined Affected Areas pursuant to the 2008 NPP." Petitioners' mandate claim sought attorneys' fees pursuant to Code of Civil Procedure section 1021.5, arguing that the case had been brought to "vindicate . . . the interests of all residents and taxpayers . . . of [the City's] compliance with state and local law and with the City's own contractual agreements."

The breach of contract claim alleged that "the 2008 Neighborhood Protection Plan Amendment constitute[d] a contractual agreement" which the City had breached "by

refusing to implement and install the [temporary traffic measures] on a permanent basis even though those traffic control measures were supported by more than 66.7 percent of the households in the defined Affected Areas, as is required by the 2008 NPP." Petitioners further alleged that the City had breached the 2008 Amendment by "conducting and purporting to rely upon the results of a survey that does not comply with the terms of the [2008 Amendment] . . . with regard to the number and location of the households that were permitted to vote in the survey. . . ."

2. Summary of briefing and evidentiary submissions in support of the petition for writ of mandate

a. Summary of petitioners' brief and evidentiary submissions

On July 1, 2010, petitioners filed their brief in support of the petition for writ of mandate. The petitioners argued that, by adopting the Conditions of Approval for the Westwood Palazzo project, the City Council had required Casden to develop a neighborhood protection plan that would become effective once it was approved by the DOP and LADOT. Petitioners further argued that the 2008 Amendment was binding on the City because it had been signed by the DOP and approved by LADOT.

Although the petitioners acknowledged that LADOT never signed the 2008 Amendment, they argued that the agency had accepted the "contractual . . . agreement" through its conduct. In support, the petitioners cited evidence showing that: (1) an LADOT employee named Pauline Chan had participated in drafting the 2008 Amendment, (2) Chan did not respond to an email from Casden indicating that LADOT's signature block had been removed from the Amendment, and (3) LADOT had "fulfilled . . . the requirements set forth in the amendment" by implementing the temporary traffic measures, monitoring the effects of those measures and sending out the traffic survey to households throughout Westwood. Petitioners also argued that, even if this evidence did not establish that LADOT had accepted the 2008 Amendment, it was sufficient to show that the City was "estopped from claiming that it is not bound by such amendment."

To prove the factual allegations in their brief, petitioners submitted deposition testimony from Pauline Chan, who was the manager of LADOT's neighborhood traffic program plans. In her testimony, Chan admitted that she had consulted with Casden and neighborhood representatives about the 2008 Amendment and that she had proposed edits that were incorporated into the document.

Chan also acknowledged receiving an email from Casden's counsel stating the following: "'Pauline, after talking with [DOP] we determined that the simplest way of accomplishing the Plan Amendment was to remove LADOT as a party to the amendment. Instead, we just note traffic measures have been reviewed "to the satisfaction of LADOT." By doing this, no signature from LADOT is required.'" Chan testified that she chose not to respond to the email, explaining "I did not want to agree or disagree with it." When counsel asked Chan why she did not respond, Chan stated "I was surprised by this action. I didn't anticipate that this is what they would do unilaterally," adding "they didn't ask us if this was appropriate or not appropriate. So . . . I was surprised by it."

Petitioners also submitted a declaration from petitioner Esther Magna, who was a board member of the Holmby-Westwood Traffic Committee and had participated in negotiating the 2008 Amendment. Magna asserted that although she had not been permitted to review the voter ballots received in response to LADOT's traffic survey, she had received information indicating that more than two-thirds of households in the Affected Areas had approved of the temporary traffic restrictions: "Following the receipt of the Official Survey Results, I and others, requested that we be permitted to examine the voted survey ballots, in order to verify whether the City Clerk had accurately counted the ballots and to determine how those households within the Affected Areas . . . had completed their ballots. Neither the City Clerk's office, nor the LADOT, would allow us to review those voted ballots. However, we were able to receive some additional limited information from the office of Councilmember Jack Weiss regarding the vote total from the households within the define [*sic*] Affected Areas plus the additional households on Manning Avenue who were permitted to participate in the survey. . . . These results showed that even including the additional residences along the length of Manning

Avenue that were not within the defined Affected Areas, over 72 percent of the survey respondents supported making all of the listed traffic control measures permanent."[4]

b. The City's opposition brief and evidentiary submissions

In its opposition to the petition for writ of mandate, the City argued that the Council's January motion provided LADOT discretion to determine whether the temporary traffic measures should be implemented on a permanent basis. In support, the City noted that the motion directed LADOT to "evaluate the effectiveness and impact of the traffic calming measures, to evaluate the level of community support, and to determine if these traffic calming measures and any other necessary, related traffic calming measures should be made permanent." The City also argued that it was not bound by the 2008 Amendment because the LADOT never signed the document.

The City's opposition was accompanied by a declaration from Pauline Chan stating that LADOT implemented the temporary traffic measures in response to the City Council's January motion, not the 2008 Amendment. Chan also stated that LADOT conducted the household survey pursuant to the January motion, which "directed DOT to evaluate the effectiveness of those measures and to determine if those measures should be made permanent or if those measures should be removed." Chan explained that the traffic survey was an "administrative mechanism" that LADOT used whenever making recommendations to the City Council about the implementation of neighborhood traffic plans. According to Chan, the requirement of a community super-majority was a standard process that LADOT used to assess local traffic measure decisions.

Chan admitted that LADOT had sent the traffic survey to households outside the "Affected Areas" described in the 2008 Amendment. According to Chan, the geographic scope of LADOT's survey was determined by utilizing standard agency policies applicable to traffic management plan surveys. Chan also stated that the LADOT did not

---

[4] Petitioners also submitted various email communications between Casden, Chan and Magna regarding the 2008 Amendment. However, the City objected to the admission of those exhibits, the trial court sustained the objections and neither party has argued that it erred in doing so. As a result, we have not considered those exhibits.

support limiting the survey to the "Affected Areas" in the 2008 Amendment because it believed the defined area failed to incorporate the views of other households that would be affected by the traffic restrictions. Chan also explained that LADOT elected not to sign the Amendment because of concerns about the survey area: "DOT staff had concerns about the survey aspect of the Project in the Amendment. . . . Although DOT staff determined it could not sign the Amendments, Casden . . . and the [Property Owners Association] apparently decided that other signatures . . . were not needed and deleted the respective signature pages."

The City also submitted over 30 declarations from Westwood residents located outside the "Affected Areas" who disapproved of the temporary traffic measures.

3. The trial court's order granting the petition for writ of mandate

On July 7, 2010, the trial court adopted a written tentative order granting the petition. The written order contained a statement of facts finding that Casden, DOP and residents of the community had "engaged in negotiations to amend the 2007 NPP, which the 2007 NPP specifically anticipated. Participating community representatives agreed upon the need to amend the NPP in order to implement traffic mitigation measures more quickly than the five-year phase contemplated in 2007. Accordingly, Plan amendments were drafted (and reviewed to the satisfaction of the DOT, as required in the 2007 NPP) for the expressly stated purpose of expediting improved traffic management measures in the defined Affected Areas and for better delineating the Parties' respective obligations and responsibilities."

The court found that, "[a]s required by the 2008 Amendment, the traffic calming measures and restrictions were installed by LADOT on a temporary basis in February 2008. They proved successful in reducing the neighborhood cut-through traffic" and did not "significantly impact any residential areas outside of the defined Affected Areas. . . . Thus, according to the express terms of the NPP, the only households that were entitled to vote on whether the temporary traffic control measures should be implemented on a permanent basis were those located within the defined Affected Areas. Nevertheless,

when LADOT distributed the survey, it unilaterally expanded the survey area to include households that were located more than half a mile from the defined Affected Areas."

The court also found that the evidence showed that "[f]ar more than the required two-thirds of the households in the Neighborhood Protection Plan's defined Affected Areas voted 'yes' to approve all the traffic mitigation measures on a permanent basis. . . . Had LADOT properly confined its survey to the defined Affected Areas identified in the 2008 NPP . . . the Temporary Improvements would have been deemed 'successful' by virtue of having received the requisite 66.7 percent super majority-support of those actually entitled to vote."

In its legal analysis, the court concluded that although the parties had "devote[d] considerable portions of their brief discussing whether the NPP and its amendments constitute a contract[,] [t]he arguments on both sides miss the mark." The court explained that "the conditions of approval for the project, which include the NPP and its amendments, are not so much a matter of contract as they are a matter of law. In essence, the conditions attached to the project carry the force of law. The issue in this case is not whether the City has a contractual duty to implement the traffic calming measures, or whether Petitioners have a right to enforce said 'contract,' but whether the City is required to comply with the law. The answer to the question is unequivocally yes."

The court continued, "[w]hen the City approved [the Palazzo Westwood project], one of the Conditions of Approval included a Neighborhood Protection Plan to help control against the intrusion of project-related traffic into local residential neighborhoods. Thus, the NPP effectively became law. Accordingly, the City and its various departments (which include LADOT) have a ministerial duty to enforce and comply with the law." The court concluded that, under the terms of "the NPP and its Amendments," the City "lack[ed] the discretion to unilaterally 'change its mind' regarding the geographical scope of the survey called for by the Neighborhood Protection Plan and to disregard the results obtained from those households located with the defined Affected Areas." "The City has a ministerial duty to comply with the law, which in this case includes the duty to

implement as permanent the Temporary Improvements that were approved by a supermajority of the residents within the defined Affected Areas."

The trial court entered an order directing the LADOT to permanently implement the temporary traffic measures. After judgment was entered on the petition for writ of mandate, petitioners voluntarily dismissed their breach of contract claim and filed a motion for attorneys' fees pursuant to Code of Civil Procedure section 1021.5. The trial court granted the motion and awarded petitioners and their intervening counsel approximately $160,000 in fees.[5] The City filed a timely appeal of the trial court's judgment granting the petition for writ of mandate and its order awarding attorneys' fees.

DISCUSSION

A. Code of Civil Procedure section 1085 and the Standard of Review

A traditional writ of mandate under Code of Civil Procedure section 1085 compels the "performance of a legal duty imposed on a government official." (*Environmental Protection Information Center, Inc. v. Maxxam Corp*. (1992) 4 Cal.App.4th 1373, 1380.) A writ may be "'issue[d] against a county, City, or other public body.'" (*County of San Diego v. State of California* (2008) 164 Cal.App.4th 580, 593.) "To obtain writ relief under . . . section 1085, the petitioner must show there is no other plain, speedy, and adequate remedy; the respondent has a clear, present, and ministerial duty to act in a particular way; and the petitioner has a clear, present and beneficial right to performance of that duty. [Citation.] A ministerial duty is one that is required to be performed in a prescribed manner under the mandate of legal authority without the exercise of discretion or judgment. [Citations.]" (*Ibid*.)

"In reviewing a judgment granting a writ of mandate, we apply the substantial evidence standard of review to the court's factual findings, but independently review its findings on legal issues. [Citation.] Interpretation of statutes, including local ordinances and municipal codes, is subject to de novo review. [Citation.]" (*City of San Diego v. San Diego City Employees' Retirement System* (2010) 186 Cal.App.4th 69, 78.)

---

[5] Petitioners' counsel, Strumwasser & Woocher, was permitted to intervene in the motion for attorneys' fees.

B. The Trial Court Erred in Concluding that the City had a Duty to Permanently Implement the Traffic Measures in the 2008 Amendment

To determine whether the City had a ministerial duty to permanently implement the traffic measures described in the 2008 Amendment, we must consider two questions. First, we must determine whether the City was bound by the 2008 Amendment. Second, if the City was bound by the Amendment, we must determine whether the terms of the Amendment required the City to permanently implement the traffic measures.

1. The 2008 Amendment is not binding on the City

The City argues that it had no duty to comply with the 2008 Amendment because LADOT never signed or otherwise approved the document.[6] Petitioners, however, contend that the 2008 Amendment was binding on the City because it was a contractual agreement that was executed by the DOP and approved by LADOT.

a. The Conditions of Approval required approval by the DOP and LADOT of the NPP and any revisions to the NPP

Before assessing whether LADOT approved the 2008 Amendment, we must determine whether the agency's approval was necessary to make the agreement effective. The 2007 NPP and the 2008 Amendment arose out of the City Council's adoption of various Conditions of Approval applicable to the Westwood Palazzo project. The parties agree that these Conditions of Approval were incorporated into a City Council resolution and therefore have the force of law. (Cf. *Terminal Plaza Corp. v. City* (1986) 186 Cal.App.3d 814, 826, fn. 7 (*Terminal Plaza*) [planning commission resolution that required installation of a pedestrian walkway as a condition of developing an office building has "the same force and effect as an ordinance"].) Because the Conditions of Approval were adopted pursuant to a resolution, they are "subject to ordinary rules of

---

[6] The City also contends that it was not bound by the 2008 Amendment because: (1) the Amendment was never adopted by a resolution of the City Council, and (2) the City Council effectively overrode the 2008 Amendment when it ordered LADOT to remove the temporary traffic restrictions on May 22, 2009. Because we conclude that the Amendment was not effective without LADOT's signature, we need not address these alternative arguments.

statutory construction." (*County of Humboldt v. McKee* (2008) 165 Cal.App.4th 1476, 1489 ["The interpretation of local . . . resolutions is subject to ordinary rules of statutory construction"].)

Condition Number 19 described the procedures that were to be followed in developing and implementing the Neighborhood Protection Plan. Condition 19 required that, prior to the issuance of a certificate of occupancy, Casden was to "submit a Neighborhood Protection Plan, including funding, for approval by the Department of Transportation . . . and the Department of City Planning . . . ." Condition 19 further provided that "Final approval of the Plan shall be authorized by the General Manager of LADOT and the Director of Planning, subject to possible revisions deemed necessary for traffic management and safety purposes and compliance with applicable traffic and parking regulations."

Although Condition Number 19 clearly states that the NPP would not be effective until it was approved by the DOP and LADOT, it is less clear whether revisions to the NPP required such approval. The language in Condition 19 could be reasonably interpreted to mean that, once DOP and LADOT approved the final draft of the NPP, the document could be revised for traffic-management purposes without formal approval of either agency. Alternatively, the language could be read to mean that, once finalized, the NPP could be revised for traffic-management purposes only if such revisions were approved by the DOP and LADOT.

Although Condition 19 is not a model of clarity, the most logical interpretation is that the City Council intended that the NPP could be revised for traffic-management purposes, but that DOP and LADOT had to approve of such revisions. "'It has been called a golden rule of statutory interpretation that unreasonableness of the result produced by one among alternative possible interpretations of a statute is reason for rejecting that interpretation in favor of another which would produce a reasonable result.'" (*Terminal Plaza, supra*, 186 Cal.App.3d at p. 828.) In this case, it would make little sense for the City Council to require the DOP and LADOT to approve the NPP, but then permit Casden or another non-government entity to unilaterally amend the document

without such approval. This is especially true given that LADOT is responsible for "the planning of transportation, traffic regulation and related uses of the City's system of streets and highways" and has "authority over the location, installation and maintenance of all signs, signals . . . and other traffic control devices." (Los Angeles Admin. Code, Ch. 20, § 22.481, subds. (a)(1) & (a)(2).)

We therefore conclude that, through its adoption of the Conditions of Approval, the City Council required the DOP and LADOT to approve the NPP and any subsequent revisions that were necessary for traffic management purposes.

b. The 2008 Amendment is not binding because it was not signed by LADOT

Based on our analysis above, the 2008 Amendment was not effective unless it was approved by both the DOP and LADOT. The City argues that LADOT did not sign the document and therefore did not approve it. Petitioners, however, contend that the 2008 Amendment constitutes "a contract between Casden, the City (through the Department of Planning), and the Holmby Property Owners Association." Although petitioners acknowledge that the contract was only signed by the DOP, they contend that LADOT's acceptance of the agreement may be implied through its conduct, including its decision to comply with several terms of the 2008 Amendment. Alternatively, petitioners contend that LADOT's conduct is sufficient to estop the City from denying the binding nature of the document.

At all times during the litigation, petitioners have maintained that the 2008 Amendment is a contractual agreement.[7] We accept petitioners' contention that the

---

[7] The petition for writ of mandate repeatedly alleges that the 2008 Amendment is a "written contractual agreement" among the City, Casden and the affected neighborhood residents. The petitioners' trial court brief filed in support of the petition states that "[t]he Neighborhood Protection Plan constitutes a contract between Casden the City (through the Planning Department), and the Holmby-Westwood Property Owners Association." Finally, in their appellate brief, petitioners maintain that the Amendment is a "contract," a "contractual agreement" and of a "contractual nature."

Amendment is in the nature of a contract in so far as it would obligate Casden and the City to perform various acts, which include implementing (and paying for) traffic restrictions and conducting a community survey. (See Civ. Code, § 1549 [defining contract as "an agreement to do or not to do a certain thing"].) We disagree, however, that the City's acceptance of the 2008 Amendment may be implied through the conduct of LADOT or that that the City may be estopped from denying the formation of a contract based on such conduct.

Generally, a party's acceptance of an oral or written agreement may be implied by his or her conduct. (See *Craig v. Brown & Root, Inc*. (2000) 84 Cal.App.4th 416, 420; *Russell v. Union Oil Co.* (1970) 7 Cal.App.3d 110, 114 ["Acceptance of an offer . . . may be manifested by conduct as well as by words"]; *Amen v. Merced County Title Co*. (1962) 58 Cal.2d 528, 532 ["contract may be 'in writing' . . . even though it was accepted orally or by an act other than signing"].) However, it is also well-established that "the manner in which a City is empowered to form a contract . . . can be controlled by the terms of its charter." (*First Street Plaza Partners v. City of L.A.* (1998) 65 Cal.App.4th 650, 661 (*First Street Plaza*).) Thus, "when a municipal charter contains an express limitation upon the mode in which the City may contract, the City is bound only by contracts executed in accordance with the charter provisions." (*Dynamic Industries Co. v. Long Beach* (1958) 159 Cal.App.2d 294, 298-299 (*Dynamic Industries*); see also *Los Angeles Dredging Co. v. Long Beach* (1930) 210 Cal. 348, 353 ["It is . . . settled that the mode of contracting, as prescribed by the municipal charter, is the measure of the power to contract; and a contract made in disregard of the prescribed mode is unenforceable"].)

The Los Angeles City Charter and Administrative Code specify the procedures that must be followed before the City can be bound by a contract. City Charter section 370 states, in relevant part: "Every contract involving consideration reasonably valued at more than an amount specified by ordinance shall . . . be made in writing, or other manner as provided by ordinance. . . . [¶] The contract shall be signed on behalf of the City by: [¶] (a) the Mayor; or [¶] (b) the board, officer or employee authorized to enter into the contract; or [¶] (c) in the case of a contract authorized by Council, the person

authorized by the Council. [¶] The City shall not be, and is not, bound by any contract unless it complies with the requirements of this section . . . of the Charter." Los Angeles Administrative Code section 10.2, in turn, states that the requirements in section 370 apply to all contracts that involve "consideration reasonably valued at more than One Thousand Dollars."

Pursuant to City Charter section 370 and Administrative Code section 10.2, a contract authorized by the City Council that is reasonably valued at more than $1,000 is only binding on the City if it is signed by the persons or entities authorized to enter into the agreement. As explained above, through its adoption of the Conditions of Approval, the City Council authorized the DOP and LADOT to enter into the NPP and any revisions necessary for traffic management purposes.[8] Therefore, if the 2008 Amendment involves consideration reasonably valued at more than $1,000, it had to be signed by both of those agencies.

The Amendment does not specifically state the value of the services the City was to provide under the agreement, but it authorizes the City to expend up to $50,000 to implement the traffic restrictions. This allocation, 50 times greater than the minimum threshold described in section 10.2, demonstrates that the requirements in section 370 apply. Those requirements were not satisfied here because the parties elected not to have LADOT sign the agreement.

Several appellate decisions have concluded that when a city charter requires that a contract must be signed by a specified party, the city's acceptance of an agreement may not be implied through other means. For example, in *First Street Plaza, supra,* 65 Cal.App.4th 650, a developer argued that the City of Los Angeles entered into a binding contract when the city council approved a report detailing the "'scope and direction of the proposed project." (*Id*. at p. 654.) Alternatively, the developer argued that it had

---

[8] There is no dispute that the 2008 Amendment was intended to address traffic management. The Amendment specifically states that the intent of the revision was to "expedite[] improved traffic management measures in the Affected Areas."

expended significant sums on the project and the city was therefore "equitably estopped from denying the formation of a contract." (*Ibid*.)

The appellate court explained that the case involved two distinct questions: "One, can the provisions of a city's charter (which itemize specific steps necessary for that city to enter into a contract) be satisfied by implication or by procedures different from those specified in the charter? Two, if the requirements of a city's charter for formation of a contract are not satisfied, can the city nevertheless be equitably estopped from denying that a contract has been formed?" (*First Street Plaza*, *supra,* 65 Cal.App.4th at p. 654.) The court concluded that "the legal answer to both of the determinative questions is no." (*Ibid*.)

In regard to the first question, the court held that that the "[t]he manner in which the City may be bound to a contract is . . . controlled by the terms of its charter." (*First Street Plaza*, *supra,* 65 Cal.App.4th at p. 662.) The court further concluded that the city charter "plainly mandate[d] that a city contract of the type involved . . . must be signed by the mayor . . . and be approved as to form by the city attorney." (*Id*. at p. 663.) Because those conditions had not been satisfied, "no contract was formed . . . ." (*Id*. at p. 667.)

In regard to the second question, the court held that cases have consistently rejected the proposition that a city can be "estopped to deny the formation of a contract" when "the requirements of the charter for contract formation have not been satisfied." (*First Street Plaza*, *supra,* 65 Cal.App.4th at p. 667.)[9] Therefore, according to the court, "the fact that plaintiff [had] expended funds in the course of its dealings with the city . . . cannot support an estoppel. [Citations.]" (*Id*. at p. 668.)

In *Dynamic Industries*, *supra,* 159 Cal.App.2d 294, the city attorney and city manager of Long Beach drafted a contract allowing the plaintiff to recover oil and gas deposits located beneath city-owned property for a period of 35 years. On March 17, 1942, the city council adopted a resolution approving the precise wording of the proposed

---

[9] The court cited almost a dozen cases that have reached a similar holding. (*First Street Plaza*, *supra,* 65 Cal.App.4th at p. 667.)

contract. After the resolution was adopted, plaintiffs expended significant sums of money that were "'necessary to the performance of its duties and obligations in relation to the contract.'" (*Id*. at p. 297.) The city, however, failed to put plaintiffs in possession of the deposits. Plaintiffs filed a breach of contract claim arguing that "the city council accepted its offer by adopting the resolution of March 17, 1942, and that the offer and acceptance created a binding agreement." (*Id*. at p. 298.) The city contended that it was not bound by the contract because the document was "never signed by the city manager, as its charter requires." (*Ibid*.)

The court ruled in favor of the city, explaining: "the contract whose validity plaintiff seeks to establish was not signed by the city manager, as the charter requires. . . . [T]he city is bound only by contracts executed in accordance with the charter provisions." (*Dynamic Industries*, *supra*, 159 Cal.App.2d at pp. 298-299.) As in *First Street Plaza*, the court also concluded that "when the charter provision has not been complied with, the city may not be held liable under quasi contract, and it will not be estopped to deny the validity of the contract. . . . The fact that plaintiff expended a substantial sum in reliance upon the 1942 resolution is immaterial in view of the charter limitation." (*Id.* at p. 299.)

In this case, the Los Angeles City Charter required that the 2008 Amendment be signed by both the DOP and LADOT. That requirement was not satisfied. Under these circumstances, the City's acceptance of the 2008 Amendment cannot be implied from the conduct of its agencies and the City cannot be estopped from denying the formation of a contract. Because the 2008 Amendment was not binding on the City, neither the City nor LADOT had a ministerial duty to abide by the terms of the agreement.[10]

---

[10] The trial court concluded that the question of whether the 2008 Amendment constituted a binding and enforceable contract was not relevant to the petition for writ of mandate. According to the court, "the conditions of approval for the project, which include the NPP and its amendments, are not so much a matter of contract as they are a matter of law. . . . The issue in this case is not whether the City has a contractual duty to implement the traffic calming measures, or whether Petitioners have a right to enforce said 'contract', but whether the City is required to comply with the law. . . . [¶] . . . [T]he

2. Petitioners failed to introduce sufficient evidence showing that the 2008 Amendment obligated the City to permanently install the traffic restrictions

Our conclusion that the City is not bound by the 2008 Amendment forecloses petitioners' claim for a writ of mandate. However, even if the City were bound by the Amendment, the petitioners would only be entitled to writ relief if they had proved that the Amendment imposed a ministerial duty to permanently install the temporary traffic restrictions. Our review of the record indicates that petitioners failed to introduce sufficient evidence to show that the City had any such duty.

The text of the 2008 Amendment states that the temporary traffic restrictions would be implemented on a permanent basis if two things occurred. First, at least 40 percent of households in the "Affected Areas" had to respond to the traffic survey regarding the temporary traffic restrictions. Second, at least two-thirds of households in the "Affected Areas" had to approve of those temporary measures. To succeed on their petition for writ of mandate, petitioners had to produce evidence demonstrating that both conditions were satisfied. (See *Espinoza v. Superior Court* (1994) 28 Cal.App.4th 957, 964, fn. 2. ["In a petition for writ of mandate, the petitioner bears the burden of proving the existence of duty on the part of respondents"].)

The record contains only two pieces of evidence regarding the results of LADOT's traffic survey. The first piece of evidence is a copy of the survey results that LADOT posted on its website. The results indicate that approximately 70 percent of households receiving a ballot responded to the survey, but that only 60 percent of the returned ballots

---

Conditions of Approval included a Neighborhood Protection Plan to help control against the intrusion of project-related traffic into local residential neighborhoods. Thus, the NPP effectively became law." Although we agree that the Conditions of Approval carry the force of law, that does not mean that the NPP and the 2008 Amendment were not contracts, nor does it mean that these agreements were not subject to the contract formation requirements in the City Charter. In effect, the Conditions of Approval authorized the DOP and LADOT to enter into the NPP and any revisions that were necessary for traffic management. The City Charter, in turn, lists the specific procedures that had to be followed before those authorized agreements would become binding on the City.

were in favor of the traffic restrictions. The parties concede that these results incorporate ballot results from households within the "Affected Areas" *and* households outside the "Affected Areas." As a result, these statistics do not aid in determining what percentage of households within the Affected Areas responded to the survey nor do they show what percentage of households in the "Affected Areas" approved of the restrictions.

The second piece of evidence is a statement in the declaration of petitioner Esther Magna: "Following the receipt of the Official Survey Results, I and others, requested that we be permitted to examine the voted survey ballots, in order to verify whether the City Clerk had accurately counted the ballots and to determine how those households within the Affected Areas . . . had completed their ballots. Neither the City Clerk's office, nor the LADOT, would allow us to review those voted ballots. However, we were able to receive some additional limited information from the office of Councilmember Jack Weiss regarding the vote total from the households within the define [*sic*] Affected Areas plus the additional households on Manning Avenue who were permitted to participate in the survey. . . . These results showed that even including the additional residences along the length of Manning Avenue that were not within the defined Affected Areas, over 72 percent of the survey respondents supported making all of the listed traffic control measures permanent."

Petitioners contend that this statement shows that "far more than the required two-thirds of the households in the Neighborhood Protection Plan's Defined Affected Areas voted 'Yes' to approve all of the traffic mitigation measures on a permanent basis." They cite no other evidence in support of their contention that a supermajority of households within the Affected Areas voted for the traffic restrictions.

The survey results Magna describes included ballot responses from two groups of households: (1) residences within the Affected Areas, and (2) "additional residences along the length of Manning Avenue that were not within the defined Affected Areas." Although 72 percent of this group apparently approved of the traffic measures, that tells us nothing about how households in the Affected Areas – considered in isolation – voted. Nor do the survey results demonstrate what percentage of households within the Affected

Areas actually responded to the survey. Based on this evidence, we can only speculate as to how households within the Affected Areas may have voted.[11]

Therefore, although we conclude that the petition for writ of mandate fails because the City was not obligated to comply with 2008 Amendment, it also appears that petitioners failed to introduce sufficient evidence to show that the 2008 Amendment required the City to implement the temporary traffic measures.[12]

---

[11] The trial court agreed with petitioners, concluding that the evidence showed "[f]ar more than the required two-thirds of the households in the Neighborhood Protection Plan's defined Affected Areas voted 'yes' to approve all the traffic mitigation measures on a permanent basis . . . . Had LADOT properly confined its survey to the defined Affected Areas identified in the 2008 NPP . . . the temporary improvements would have been deemed 'successful' by virtue of having received the requisite 66.7 percent super majority support of those actually entitled to vote." Based on our review of the record, these findings are not supported by substantial evidence. In the trial court, petitioners' contention that a super-majority of households in the Affected Areas voted in favor of the traffic restrictions was predicated entirely on the statements in Magna's declaration. They did not cite any additional evidence. For the reasons discussed above, Magna's statement is not sufficient to demonstrate how the households in the Affected Areas voted nor is it sufficient to show what percentage of those households responded to the survey.

[12] Neither party raised this evidentiary issue in their appellate briefing. We recognize that Government Code section 68081 requires that, before rendering a decision "based upon an issue not proposed or briefed by any party," a court of appeal must "afford the parties an opportunity to present their view on the matter through supplement briefing." In this case, however, no such briefing is necessary because our decision is not based on petitioners' failure to introduce evidence demonstrating how households in the Affected Areas actually voted. Even if such evidence were in the record, it would not change our conclusion that the Amendment is not binding on the parties because it was never signed by LADOT.

DISPOSITION

The judgment is reversed. Appellants shall recover their costs on appeal.

ZELON, J.

We concur:

WOODS, Acting P. J.

JACKSON, J.