SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT

SUMMIT MEDIA LLC,

Petitioner and Plaintiff

vs.

CITY OF LOS ANGELES

Respondent and Defendant

CBS OUTDOOR INC. AND

CLEAR CHANNEL OUTDOOR, INC.

Real Parties in Interest

Case No.: BS116611

COURT'S RULING ON:
MOTION FOR JUDGMENT
ON PEREMPTORY CHALLENGE
WRIT OF MANDATE

Summit Media LLC v. City of Los Angeles, BS 116611

Motion for Judgment on Peremptory Writ of Mandate

In this motion, Petitioner/Plaintiff Summit Media, LLC ("Summit") seeks a writ pursuant to CCP §1094 commanding Respondent/Defendant City of Los Angeles ("City") to (1) set aside and cease implementing the Settlement Agreement("Settlement Agreement") entered into with Real Parties in Interest Clear Channel Outdoor Inc. and CBS Outdoor Inc. ("RPIs") dated 09/30/06, and (2) withdraw any permits or authorizations issued pursuant thereto. For all the reasons set forth in more detail below, Summit's Motion for Judgment on Peremptory Writ of Mandate is GRANTED, as the Settlement Agreement is an invalid ultra vires act. This Court will not order permits obtained pursuant to the Settlement Agreement revoked, as that is a function most properly left to the City's administrative process.

This Court adopts the Statement of the Case drafted by Department 85 in its Ruling on the Scope of Standing as an accurate recital of the facts of this case.

A. Statement of the Case

"Summit filed its Petition on August 27, 2008, seeking mandamus relief under CCP section 1085 to set aside a September 2006 Agreement between the City and Real Parties, from litigation styled Vista Media Group , Inc. v. City of Los Angeles , LASC Case No. BC282832 ("the Vista Action"). Summit contends that the Agreement amounts to an invalid, illegal and *ultra vires* act.

The Petition alleges in pertinent part as follows. Summit and Real Parties CBSO and Clear Channel are all engaged in the outdoor advertising business within the City of Los Angeles (the "City"). As part of their businesses, each company owns and maintains numerous "off-site signs" which are billboards in locations other than at a property owner's business.

On December 14, 2000, the City Council passed the "billboard Interim Control Ordinance" (Ordinance No. 173681), which prohibited the issuance of any new permits for billboards. In April 2002, the City Council passed Ordinance No. 174547 to amend the Los Angeles Municipal Code to establish a permanent, general ban on all off-site signs throughout Los Angeles (the "Sign Ban"). The Sign Ban applies not only to the erection of new off-site signs, but to the substantial renovation or alteration of existing signs. Off-site signs are permitted only if they are erected under a legally adopted specific plan, a supplemental use district, an approved development agreement, or a relocation agreement pursuant to California Business and Professions Code Section 5412. The ban is codified in LAMC sections 14.4.4(B)(11) and 12.21(A)(7)(1).

In February and July 2002, the City Council passed Ordinance Numbers 174442 and 174736 ("the Inspection Fee Ordinance") to amend the Municipal Code to establish an Off-site Sign Inspection Program. The main components of the Inspection Program are as follows: (a) all off-site signs on private property in the City are subject to annual

inspection; (b) an annual fee is imposed on all off-site signs structures on private property in the City ("Inspection Fee"); (c) upon payment of the Inspection Fee and provision of the relevant building permit or equivalent documents, the City will issue a certificate of compliance; and (d) if the annual Inspection Fee is not paid, or the City determines that a sign was not lawfully erected, the sign will be removed. LAMC §91.6205.18(1)-(11).

On September 27, 2002, Clear Channel and Viacom Outdoor Inc. (predecessor in interest to CBSO) filed a Complaint against the City and others in the United States District Court, Case No. 02-7586 ("the Clear Channel action") asserting that the Off-Site Sign Inspection Program was invalid. On October 4, 2002, Vista Media Group, Inc. brought its reverse validation action against the City in Superior Court, seeking to invalidate the Inspection Fee Ordinance (the "Vista" action"). CBSO and Clear Channel intervened in the Vista action, and filed cross-complaints against the City in the Vista Action, seeking to invalidate both the Inspection Program and the Inspection Fee Ordinance.

In September 2006, the City entered into the Settlement Agreement with CBSO and Clear Channel in the Vista Action. The Settlement Agreement grants CBSO and Clear Channel exemption from the City's Sign Ban, the Off-Site Sign Inspection Program, and numerous other zoning and building laws regulating off-site signs in the City.

The Settlement Agreement exempts CBSO and Clear Channel from the application of numerous zoning and building laws, including many provisions of the Sign Ban. The Settlement Agreement allows CBSO and Clear Channel to maintain all of their pre-1986 off-site signs, whether or not lawfully erected, whether or not they have permits, whether or not they comply with their permits, and whether or not they violate present or prospective City building ordinances. In contrast, the Sign Ban requires the immediate removal of unlawfully erected signs, and signs not in compliance with their permits, as well as the imposition of fines.

The Settlement Agreement also requires the City to issue new permits to allow CBSO and Clear Channel to "modernize" up to 840 of their post-1986 off-site signs – one quarter of their total inventory. The City has agreed to issue these permits despite the Sign Ban for new off-site signs, and its strictly enforced ban on these very types of modification. The City has also agreed to issue these permits without regard to whether or not those 840 signs were lawfully erected, whether or not those 840 signs ever had permits, whether or not those 840 signs comply or have ever complied with a permit, and whether or not those 840 signs violate present or prospective City building and zoning ordinances.

Additionally, the Settlement Agreement permits CBSO and Clear Channel to add 200 new off-site signs to their existing sign structures, known as "back-up faces," despite the City's general ban on all new off-site signs, including adding "back-up faces," by way of alteration or modification of an existing sign structure.

The Settlement Agreement gives Clear Channel and CBSO a general exemption from the requirement to provide evidence that pre-1986 sign structures were lawfully erected, a direct violation of LAMC section 91.6205.18(3). Off –site signs erected by Clear Channel and CBSO between 1986 and 1998 will be allowed to exist even if no permit was ever obtained or the signs were illegally modified. The Settlement Agreement gives Clear Channel and CBSO the right to maintain sign structures that are

out of compliance with the original building permit, even though such alterations render the signs illegal and subject to abatement under LAMC section 91.6205.18(9).

The Settlement Agreement specifically identifies 10 separate City laws with which CBSO and Clear Channel need not comply in undertaking modernizations, including LAMC sections 12.21 (A)(7)(1)(off-site sign ban), 12.21.1(A)(10)(height restrictions), 12.22(a)(23)(regulations in mini-shopping centers and commercial corners), 91.6205.18(the Inspection Program), and LAMC §9 1.6205.11(11) or any other ban on one or more categories of signage.

CBSO and Clear Channel are also exempted from the usual procedures for obtaining permits. Section 5(D)(ii)prescribes that, in the event the City cannot process CBSO's and Clear Channel's permit applications within 30 days, the City is prohibited from processing any other "building, demolition or relocation permits for any structure, including but not limited to signs" until it has cleared CBSO's and Clear Channel's applications. Thus, no matter what the circumstances or exigencies, the applications of every other Los Angeles resident and property owner must be put on hold until those of Clear Channel and CBSO are approved.

Shortly after signing the Settlement Agreement, CBSO and Clear Channel began undertaking significant modifications of their existing signs, which are otherwise prohibited by the general ban on off-site signs. Clear Channel has already received City permits under the Settlement Agreement to convert over 40 off-site signs to digital displays. Because the cost to convert an existing static, wood and vinyl sign to an LED digital display exceeds 50 percent of the replacement cost of both the sign and sign support structure, such a conversion would not be a mere "alteration repair or rehabilitation" within LAMC section 91.6216.4, but would be either a violation of that section or a new sign subject to the general ban. CBSO has received numerous permits as well." Dept. 85, Ruling on Scope of Standing.

B. Standing

In the abovementioned rulings, Judge Chalfant unequivocally determined that Summit has standing to contend that the Settlement Agreement is *ultra vires* based on its status as a property owner whose interest has been affected by the terms of the Settlement Agreement. The evidence shows that Summit owns a wood-and-vinyl sign at 6080 Pico Blvd., less than 300 feet from RPIs' digitized sign at 6091 Pico Blvd. (See Kouba Decl., ¶¶ 8-12, Exhs. A-G). At the time the Settlement Agreement was entered into, LAMC §§14.4.4(B)(11) and 12.21(A)(7)(l) prohibited "alterations or enlargements of legally existing off-site signs." Such alterations were only "permitted pursuant to a legally adopted specific plan, supplemental use district, an approved development agreement, or a relocation agreement." LAMC §14.4.4(B)(11). Alternatively, alterations could be made pursuant to a zoning variance or significant modification under LAMC §§12.27 or 91.6201.6. Each of these exceptions to the sign ban requires a public hearing in which Summit would be entitled to participate and object. See, e.g., LAMC §§12.27(C); 91.6201.6.3; 11.5.7(A); 12.32(C)(3). Yet no such hearing was held here before the City authorized RPIs to alter, i.e. digitize, their sign pursuant to the terms of the Settlement Agreement. For this reason, Judge Chalfant concluded that the Settlement Agreement "circumvented Summit's right to protect its property by contractually removing its statutory right to be heard...As such, Summit has a direct and substantial interest in objecting to and preventing

[RPIs] from modernizing its signs located in near proximity to Summit's signs." (12/15/08 ruling, p. 5).

Moreover, in *Tustin Heights Association v. Board of Supervisors* (1959) 170 Cal.App.2d 619, the Court of Appeal noted:

> "The petitioners are the owners of real property within the zoned area and as such they are restricted in the use of their property by the zoning ordinance. Each of such property owners has an interest in the enforcement of the ordinance which is peculiar to him. If the ordinance is violated, he suffers special damage that is distinguishable from that suffered by the public at large...In our case, petitioners allege that the law has been violated and they seek to have the board of supervisors comply with the ordinance which the county enacted. An owner of property within a zoned district is restricted in the use and occupation of his property by law. If he were to be prevented from going to court to seek redress for an alleged violation of that same statute by the board of supervisors or any public official, certainly there would be a denial of equal protection of the law. The private citizen would be subject to the burdens and obligations of the statute, yet denied the right to protect the integrity and character of his property by the same ordinance." *Id.* at 636-637.

Likewise here, Summit's sign is within the same "zoned district" as RPIs' sign, yet Summit's property is subject to laws from which RPIs have been contractually exempted, i.e. L.A.M.C. §14.4.4(B)(11) and §12.21(A)(7)(l). Summit certainly has standing to challenge the Settlement Agreement.[1]

C. Ripeness

RPIs argue that Summit's claims are not ripe for adjudication. "A controversy is 'ripe' when it has reached, but has not passed, the point that the facts have sufficiently congealed to permit an intelligent and useful decision to be made." *St. John v. Superior Court* (1978) 87 Cal.App.3d 30, 35. As a nearby property owner with standing, Summit seeks a determination that those provisions of the Settlement Agreement that allowed the digital conversion of RPIs' sign are illegal, the permits issued pursuant to those provisions are void, and that the City's entry into the Settlement Agreement as a whole was *ultra vires*. There is nothing premature or unripe about these issues. The fact that Summit did not apply for a permit to modernize its own billboard is of no consequence. What is at issue here is the City's alleged unlawful approval of RPIs' billboard, which is ripe for determination.

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[1] RPIs also argue that Summit lacks standing because Summit's own sign violates the LAMC by exceeding the applicable height limit according to a survey conducted by Richard M. Snedaker on behalf of RPIs. (See Simon Decl., Exh. F). However, there is direct evidence *from the City* that Summit's sign complies with all regulations. (See Starr Decl., Exh. 1). Indeed, in a latter dated 05/13/09, Deputy City Attorney Steven Blau expressly stated, "[a]ccording to measurements taken by the Department of Building and Safety on January 29, 2009, the sign at 6080 West Pico Blvd complies with the plans approved by the City." (Starr Decl., Exh. 2). Moreover, RPIs cite to no authority for the proposition that a property owner is foreclosed from challenging a contractual exemption from zoning laws merely because his property is technically out of compliance with an unrelated law, such as a height restriction. Accordingly, RPIs' argument is without merit.

D. Exhaustion of Remedies

RPIs claim that Summit failed to exhaust its administrative remedies before bringing this action. RPIs are mistaken. In the first instance, Summit is challenging the Settlement Agreement, not just the permits issued thereunder, and RPIs fail to cite any authority requiring a party to exhaust administrative remedies prior to challenging an illegal government contract or any administrative avenue by which Summit could have challenged the Settlement Agreement. Moreover, even if Summit were challenging the particular permit issued to RPIs with respect to their Pico sign, and there was an administrative process, as claimed by the City and RPIs, that Summit could have used to do so, such efforts would have been futile, as the evidence shows that the City considered itself bound by the terms of the Settlement Agreement to issue the permits to RPIs for their digital billboards, including the one on Pico Blvd. (See Alger Decl., Exh. 3). Indeed, the Settlement Agreement itself provides that "[t]he City will not voluntarily assist" any challenge to the Settlement Agreement or to any permits issued thereunder. (Alger Decl., Exh. 1, §18(B)). Thus, it would have been futile for Summit to administratively challenge permits issued by the City under an agreement that the City voluntarily entered and which purports to bind the City to issue those very permits.

E. Mootness

RPIs next claim that this dispute is moot because of the recent decision in *World Wide Rush, LLC v. City of Los Angeles* (C.D. Cal. 2008) 579 F.Supp.2d 1311, invalidating LAMC §14.4.4(B)(11), and because of the fact that the City has stopped issuing modernization permits to RPIs. With respect to the *World Wide Rush* case, that decision is on appeal and thus, not final. Whether or not the City is currently issuing modernization permits is irrelevant. It is undisputed that the City *was* issuing such permits to RPIs under the Settlement Agreement and those digital conversions approved by the City are still standing and operating, including the sign at 6091 Pico Blvd. which is directly across the street from Summit's sign. This action is not moot.

F. Propriety of Writ and Writ Relief

Under CCP §1085, a writ of mandate will lie when the respondent has a ministerial duty to perform, the petitioner has a clear and beneficial right to performance, and the petitioner has no plain, speedy, and adequate alternative remedy. As set forth above, Summit clearly has a beneficial interest in this action, and no other remedy exists for Summit to challenge the City's actions. Moreover, mandate will lie to correct action taken in violation of law, including setting aside an invalid agreement entered into by the government. See *Trancas Property Owners Assn. v. City of Malibu* (2006) 138 Cal.App.4th 172; *Avco Community Developers, Inc. v. South Coast Regional Com.* (1976) 17 Cal.3d 785. Thus, contrary to RPIs' assertions, the requested writ relief is proper here.

With that being said, a writ should be issued.

RPIs are wrong in claiming that the Settlement Agreement merely "interprets" the City's land use regulations. Even a cursory review of the terms shows that it, as argued by Summit, exempts RPIs from present and prospective zoning laws. Specifically, the Settlement Agreement grants the RPIs 420 "credits" each to modernize their signs and provides that "neither Clear Channel nor CBS will be denied a permit for any Modernization on any existing Structure, or restricted in the use of any Modernization, based upon the fact that the sign to be modernized is a roof sign or based on the fact that any Structure to be modernized may otherwise fall within a prohibition or restriction in any of the following Ordinances, Code provisions, interpretations or memoranda..." (See Alger Decl., Exh. 1, §5(B)(ii); §7). The City further warranted that "no Modernization or re-permitting for an existing structure shall be denied based on zoning regulations." (*Id.* at §5(B)(iii)(b)). "It is the intent of the parties that permits and work approvals for Modernizations will not be denied or withheld, and the use of Modernizations will not be restricted, based on any other prohibition or restriction of the Los Angeles Municipal Code..." (*Id.* at §5(B)(iv)). Indeed, "[t]he City shall have no discretion to decline approval under this Section for any reason other than" failure to comply with applicable building and electrical provisions of the Code, non-payment of fees, or defective building plans. (*Id.* at §5(D)(iii)).

Based on the plain language of these provisions, the Settlement Agreement clearly allows the City and RPIs to circumvent the general ban on alterations to existing off-site signs under LAMC §§14.4.4(B)(11) and 12.21(A)(7)(l).[2] Because land use regulations involve the exercise of police power, "[i]t is settled that the government may not contract away its right to exercise [its] police power in the future." *Avco*, *supra*, at 800; see also *Trancas*, *supra*, at 187; *Alameda County Land Use Assn. v. City of Hayward* (1995) 38 Cal.App.4th 1716, 1724; *Delucchi v. Santa Cruz County* (1986) 179 Cal.App.3d 814, 823. As confirmed in *League of Residential Neighborhood Advocates v. City of Los Angeles* (9th Cir. 2007) 498 F.3d 1052, 1056:

> "Municipalities may not waive or consent to a violation of their zoning laws, which are enacted for the benefit of the public. Any such agreement to circumvent applicable zoning laws is invalid and unenforceable."

Even RPIs have acknowledged that such agreements are unlawful and void. In opposing Vista's settlement agreement with the City in the *Vista* action, RPIs argued:

> "It is a well settled principle of California law that a municipality cannot by contract circumvent the procedural requirements that govern the exercise of legislative authority. Public hearings and public notice requirements are particularly indispensable components of this process as they implicate California's 'clear policy'of 'involv[ing]' the public and affected property owners at every level of the process when land use decisions are being made.' *Penn-Co v. Board of Supervisors* (1984) 158 Cal.App.3d 1072, 1083-1084. Any attempt to

[2] RPIs go to great lengths to argue that LAMC §§91.6216 and 12.23(C)(3), which allow for alterations to existing signs if certain criteria is met, constitute exceptions to LAMC §§14.4.4(B)(11) and 12.21(A)(7)(l), thus allowing conversion of off-site signs to digital billboards. However, the plain language of LAMC §§14.4.4(B)(11) and 12.21(A)(7)(l) show that the ban on altering off-site signs was intended to apply to *existing* off-site signs. Moreover, RPIs have not even shown that digital conversions are they type of "alterations" allowed under LAMC §§91.6216 and 12.23(C)(3) or that they meet the criteria set forth therein. RPIs' argument is further belied by their own conduct and the City's conduct. (See Summit's Reply, pp. 10-13).

circumvent such requirements is *ultra vires* and void." (See Summit's RJNs, Exh. L, p.11).

Nowhere in the Settlement Agreement is the City required to give notice of or conduct a public hearing prior to issuing a permit to RPIs. Accordingly, under RPIs' own previous argument, Sections 5 and 7 of the Settlement Agreement are illegal and void. Moreover, "[i]f the central purpose of the contract is tainted with illegality, then the contract as a whole cannot be enforced *Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 124. Here, the central purpose of the Settlement Agreement – the exemption of RPIs from zoning laws in return for certain alleged benefits to the City – is illegal, so the contract as a whole cannot stand.

Further, Section 16 of the Settlement Agreement , the only provision that addresses severability, provides that if any of the provisions of the Agreement are declared invalid or unenforceable, RPIs are restored to their original position. It is this Court's opinion that this shows that it was the parties intent that the Settlement Agreement be an integrated whole.

At oral argument on October 5, 2009, RPIs introduced evidence of the issuance of a permit for digital modernization of an off-site sign, allowing the property owner to modify the existing sign by allowing an L.E.D. electronic image display. As the permit was issued in 2005, before the Settlement Agreement, RPIs argued that this permit was proof that the City was granting permits for digital modernization independent of the Settlement Agreement, and thus, the Settlement Agreement did not create exceptions for the RPIs.

This Court asked for further briefing to determine if this permit raised a question of fact on this issue. After consideration of all the materials and evidence[3] submitted in the supplemental briefing, and after hearing additional oral arguments, this Court concludes that nothing presented changes the tentative ruling of October 5, 2009 and the findings and conclusions expressed in this Opinion. [4]

Preliminarily, and upon further reflection, this Court agrees with Plaintiff that the legality of the 2005 permit nothwithstanding, whether or not the Settlement Agreement is ultra vires depends upon the Court's reading of the language of the Settlement Agreement and the Municipal Code. *Halbert's Lumber, Inc. v. Lucky Stores, Inc.*, 6 CA 4th 1233 (1992).

3. Much of RPI's evidence was a marginal relevance, if not inadmissible. For example, the declarations of John Carroll contained inadmissible heresay statements of Hatfield and Anderson. The declaration of Donna Desmond contained inadmissible interpretations of statutes. Lastly, the parties are reminded that while this Court can take judicial notice of administrative proceedings, it cannot take judicial notice of the truth of facts contained in the notice of those proceedings. *Sosinsky v.Grant*, 6 CA 4th 1548. Hence, Exhibits A and B of the RPI's Supplemental Memorandum filed October 28, 2009 adds nothing.

4. RPIs correctly note that on August 31, 2009, this Court stated that there were factual questions "galore" in this case. That was before this Court read the pleadings and heard oral argument. After this extensive consideration, this Court does not find any material questions of fact, galore or otherwise.

As noted herein, a plain reading of these sections shows with crystal clarity that conversion or alteration of off-site signs into digital displays was prohibited at the time of the 2005 permit and the Settlement Agreement. Significantly, the evidence submitted by the City shows, without contradiction, this ban to have been in place. There is singly no rational reading of the Municipal Code, or any rational interpretation of the evidence, to support RPI's theories that the Settlement Agreement merely clarified ambiguities, or that alterations or modifications were somehow permitted.

G. Other Issues

RPIs claim that the City's charter, specifically §273(c), empowers the City to settle litigation, regardless of whether it conflicts with city ordinances. However, this very argument was addressed and rejected in *League*, *supra*, at 1057:

> "[W]e reject any argument that the City [of Los Angeles] may circumvent its zoning procedures by referencing its general authority to settle litigation under §273(c) of the city charter...This provision does not purport to authorize contractual exemptions from zoning requirements. *Trancas* clearly holds that such exemptions are illegal, and §273(c) cannot grant the City more authority than is permitted under California law."

RPIs next contend that various affirmative defenses have yet to be adjudicated, which precludes entry of judgment on Summit's motion. With respect to the collateral estoppel, judicial estoppel, and statute of limitations defenses, these have already been rejected by Judge Chalfant. (See 12/15/08 and 02/09/09 rulings). The unclean hands defense is barred as a matter of law because it cannot be invoked where, as here, the act sought to be enjoined is against public policy. See *Jomicra, Inc. v. California Mobile Home Dealers Association* (1970) 12 Cal.App.3d 396, 402. There is also no merit to RPIs' contention that issuing the requested writ would "violate a judgment of another court." As noted by the RPIs themselves, "[i]t is beyond the scope of this court's power to enter a consent decree that adopts terms of a settlement agreement that is *ultra vires* or otherwise exceeds the scope of the City's authority." (See Summit's RJNs, Exh. CC, p. 4). Thus, based on this argument, there is no risk of inconsistent judgments because the previous court had no authority to enter a judgment on the *ultra vires* Settlement Agreement in the first place. And finally, there is no evidence to support RPIs' laches defense. A defendant must demonstrate three elements to successfully assert a laches defense: (1) delay in asserting a right or a claim; (2) the delay was not reasonable or excusable; and (3) prejudice to the party against whom laches is asserted. *Magic Kitchen LLC v. Good Things Intern. Ltd.* (2007) 153 Cal.App.4th 1144. According to Alex Kouba, Summit's managing member, neither him nor anyone else at Summit knew of the Settlement Agreement until after the time to appeal had passed. (See Kouba Decl., ¶ 4). This evidence is uncontradicted. Moreover, the evidence shows that within 3 months after the Stipulated Judgment was entered in the *Vista* action, Summit filed its first action against the City in federal court. (See Summit's RJNs, Exhs. O & P). Summit then filed this action after the federal action was formally dismissed in April 2008. (See RPIs' RJNs, Exh. 42). How RPIs have been

prejudiced by Summit's actions, which appear to be otherwise reasonable, has not been shown. The laches defense fails.

H. Remedy

Given that the Settlement Agreement is void, the remaining question deals with what consequences should flow. Summit contends that a public agency agreement that was entered into unlawfully is void for all purposes, and that therefore all permits issued pursuant to that agreement should be revoked. Summit cites LAMC Section 11.02, and *Midway Orchards v. County of Butte*, (1990) 220 CA. 3d 765, to bolster their position. *Midway Orchards* holds that "(a) contract entered into by a local government without legal authority is 'wholly void', ultra vires, and unenforceable. (citations). Such a 'contract' can create no vested rights." Id at 783.

RPI countered that an order voiding all permits issued pursuant to the Settlement Agreement would create fundamental unfairness. First, they cite to the fact that the RPIs "played by the rules" (albeit ones they drafted). They also note that if they were forced to re-apply for these permits, they would encounter different rules than the ones that existed in 2006 – 2008. Lastly, RPIs urge that revoking the permits would serve no rational purpose as some or many of the billboards comply with zoning and other laws in effect at that time, and that individual determination, board by board, must be made to decide if a permit should be revoked.

This Court has no intention of issuing a Writ that has no real consequences, and agrees that the Settlement Agreement is void for all purposes. However, this Court agrees with the RPI's that the issue of permit revocation is an administrative one. With the protections of the Settlement Agreement gone, the City's administrative hearings would no longer be a futile exercise and the City must apply its codes equally to all. Citizen challenges to the billboards could be made on an individual basis, with the merits of each determined independently. The People's elected representatives, and their appointees, are in the best position to make these determinations and to decide what standards are to be applied. This Court is also mindful that, in pursuing its course of action over the last few years, the RPIs relied on an agreement sanctioned by the Superior Court. Such reliance is reasonable, even if later this and other courts find that agreement invalid.

I. Conclusion

The Motion for Judgment on the Peremptory Writ of Mandate is GRANTED, and the City is required to set aside and cease implementing the Settlement Agreement entered into with RPIs dated 9/30/06.

DATED: 11/4/09

Hon. Terry A. Green, Judge of the Superior Court