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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SONOMA

Client/Matter No.: 04200-0061

Docket:

Attorneys: I. Yang, E. Walsh

Paralegals: _____

HONORABLE ELAINE RUSHING
Supervising Judge, Civil Division
Superior Court of California
County of Sonoma
1450 Guerneville Road, B
Santa Rosa, CA 95403
Telephone: (707) 521-6750

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SONOMA

Concerned Citizens of Santa Rosa
Against Redevelopment Law Abuse, Inc.,
a California Non-Profit Corporation,

CASE NO. SCV-239183
STATEMENT OF DECISION

Plaintiffs,

v.

City of Santa Rosa and the Redevelopment
Agency of the City of Santa Rosa,
Defendant.

The above-entitled case came before Department 19 of the above-entitled Court, the Honorable Elaine Rushing presiding without a jury on February 8, 2008. Plaintiffs Kay Tokerud, et al., appeared by and through their attorneys of record, William T. Brooks and Virginia Hess. Defendant City of Santa Rosa appeared by and through its attorneys of record, Iris Yang and Ethan Walsh, and Michael J. Casey. Defendant Burbank Housing Development Corporation appeared by and through its attorney of record, Bob Haroche. Defendant Santa Rosa Chamber of Commerce appeared by and through its attorney of record, Richard Rudnansky. Upon conclusion of oral argument, the matter was taken under submission.

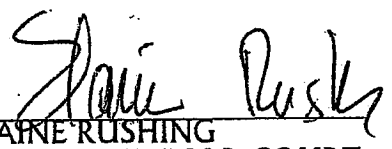
The court issued a Tentative Decision on February 26, 2008. Plaintiffs filed a Specification of Controverted Issues Not Covered by the Tentative Decision March 7, 2008. Defendants filed a Response to Plaintiffs' Specification of Controverted Issues on March 17, 2008.

///

1 The court agrees with the defendants that plaintiffs' Specification is really a request to have
2 the court dwell on numerous underlying factual disputes instead of simply to cover the principal
3 issues before it. At most trials, evidence is received on many relevant but subsidiary issues. Only
4 those that are "closely and directly related to the trial court's determination of the ultimate issues
5 in the case" need be covered in the statement of decision. See Kuffel v. Seaside Oil Co. (1977)
6 69 Cal.App. 3d 555, 565. It is sufficient to state the ultimate facts that support the decision. It
7 is not necessary to state evidentiary facts. See People v. Dollar Rent-a-Car (1989) 211 Cal.App.3d
8 119, 127-128 (judge's findings of misrepresentations need not specify which acts or which
9 language constituted those misrepresentations); Hellman v. La Cumbre Golf & Country Club
10 (1992) 6 Cal.App, 4th 1224, 1229-1231 (judge was justified in refusing to answer 19 questions
11 posed in request for statement of decision).

12 In light of the above, the court hereby incorporates by reference and adopts, without change,
13 the Tentative Ruling issued February 26, 2008 as the final Statement of Decision. (See Slavin v.
14 Borinstein (1994) 25 Cal.App. 4th 713, 718-719.)

15
16 Dated: April 2, 2008


HON. ELAINE RUSHING
JUDGE OF THE SUPERIOR COURT

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PROOF OF SERVICE
(CCP 101.3a, 2015.5; CRC 2008)

I am an employee of the Superior Court of Sonoma County, State of California. I am over the age of 18 years and not a party to the within action. My business address is 1450 Guerneville Road, Santa Rosa, California, 95403.

On this date I served the attached:

STATEMENT OF DECISION

on the following party to this action by placing a true and correct copy therein in a sealed envelope, addressed as follows:

William T. Brooks, Esq.
Brooks & Hess
99 Almaden Blvd. Ste 310
San Jose, CA 95113

Brien J. Farrell, Esq.
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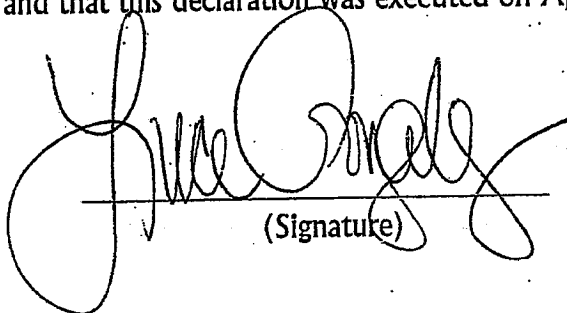
Ethan Walsh, Esq.
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555 Capitol Mall 9th Fl.
Sacramento, CA 95814

[X] (BY MAIL) I placed each such sealed envelope, with postage thereon fully prepaid for first-class mail, for collection and mailing at Santa Rosa, California, following ordinary business practices. I am readily familiar with the Superior Court of Sonoma County for processing of correspondence, said practice being that in the ordinary course of business, correspondence is deposited in the United States Postal Service the same day as it is placed for processing.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct and that this declaration was executed on April 2, 2008 at Santa Rosa, California.

LUCE GONZALEZ

(Type or print name)



(Signature)

ENDORSED
FILED

FEB 26 2008

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SONOMA

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8 SUPERIOR COURT OF CALIFORNI
9 COUNTY OF SONOMA

10 Concerned Citizens of Santa Rosa
Against Redevelopment Law Abuse, Inc.,
11 a California Non-Profit Corporation,

CASE NO. SCV-239183

TENTATIVE DECISION

12 Plaintiffs,

13 v.

14 City of Santa Rosa and the Redevelopment
Agency of the City of Santa Rosa,

15 Defendant.
16 _____ /

17 I. Introduction

18 The above-entitled case came before Department 19 of the above-entitled Court, the
19 Honorable Elaine Rushing presiding without a jury on February 8, 2008. Plaintiffs Kay Tokerud,
20 et al., appeared by and through their attorneys of record, William T. Brooks and Virginia Hess.
21 Defendant City of Santa Rosa appeared by and through its attorneys of record, Iris Yang and Ethan
22 Walsh, and Michael J. Casey. Defendant Burbank Housing Development Corporation appeared
23 by and through its attorney of record, Bob Haroche. Defendant Santa Rosa Chamber of Commerce
24 appeared by and through its attorney of record, Richard Rudnansky. Upon conclusion of oral
25 argument, the matter was taken under submission.

26 The court, having considered the administrative record, matters judicially noticed, the
27 arguments of counsel, and being fully advised, issues the following Tentative Decision which shall
28 become the Statement of Decision, unless within ten (10) days either party specifies controverted

1 issues or makes proposals not covered in the Tentative Decision. (See CCP § 632 and CRC
2 3.1590)

3 Plaintiff Kay Tokerud is a resident of and the owner of real property in the City of Santa Rosa
4 not in the project area. She is an interested taxpayer. Plaintiff Concerned Citizens of Santa Rosa
5 Against Redevelopment Law Abuse, Inc., a California Non-Profit Corporation (which initially sued
6 under the name Santa Rosa Area Business Association; an unincorporated association) is a group of
7 persons who reside and/or do business in the Project Area. Plaintiffs bring the action as a private
8 attorney general, pursuant to CCP § 1021.5.

9 Defendants are the City of Santa Rosa and the Redevelopment Agency of the City of Santa
10 Rosa (collectively referred to herein as "the City").

11 In this action, plaintiffs seek:

12 a) Judicial determination of the validity of the Redevelopment Plan for the Gateways
13 Redevelopment Project Area (approx. 1,100 acres located in the central part of the City covering
14 about 1.1 sub-areas) and Ordinance 3782 adopted June 20, 2006 approving it.

15 b) Injunctive and declaratory relief preventing illegal diversion of property taxes and illegal
16 exercise of eminent domain authority by Santa Rosa.

17 The California Community Redevelopment Law (CRL) permits cities and counties to form
18 redevelopment projects for the purpose of eliminating blight. Plaintiffs claim that in determining the
19 project area to be blighted, defendants utilized false and/or misleading data; improper and
20 contradictory definitions of conditions; inconsistent and irrelevant survey results and data which did
21 not relate to or describe conditions in the Project Areas. Defendants allegedly used out of date
22 and/or too general data to support its findings.

23 Plaintiffs contend the record and responses to objections lack substantial evidence to support
24 findings that:

25 a) Blighting conditions as required by law are substantial or prevalent in the Project Area;

26 b) The Project Area is characterized by one or more of the conditions set forth in Health
27 Safety Code (hereafter "H&S Code") § 33031(a) or 33031(b);

28 c) The Project Area is characterized by conditions described in H&S Code § 33030(b) and

1 the existence of inadequate public improvements, parking facilities or utilities;

2 d) The Project Area contains buildings in which is it unsafe or unhealthy for persons to live
3 and work as required by H&S Code § 33031(a)(1);

4 e) The Project Area contains factors that substantially hinder the economically viable use or
5 capacity of buildings or lots;

6 f) The Project Area contains adjacent or nearby uses that are incompatible with each other
7 and which prevent the economic development of those parcels or other portions of the Project
8 Area;

9 g) The Project Area contains subdivided lots of irregular form and shape and inadequate size
10 for proper usefulness and development that are in multiple ownership;

11 h) The Project Area contains depreciated or stagnant property values or impaired
12 investments, including, but not limited to, properties containing hazardous waste that requires the
13 use of Redevelopment Agency Authority;

14 i) The Project Area contains abnormally high business vacancies, abnormally low lease rates,
15 high turnover rates, abandoned buildings or excessive vacant lots within an area developed for urban
16 use and served by utilities;

17 j) The Project Area contains a high crime rate that constitutes a serious threat to the public
18 safety and welfare.

19 Plaintiffs argue:

20 a) There is no evidence to support a finding that the Project Area is blighted; in fact, it
21 includes a substantial amount of property which is non-blighted and which inclusion is not necessary
22 for effective redevelopment;

23 b) Defendants have abused their discretion in finding it is blighted;

24 c) The unlawful conduct of defendants in implementing the Redevelopment Plan, unless and
25 until enjoined and restrained, will cause great and irreparable injury to Plaintiffs and other interested
26 parties in the Project Area and City of Santa Rosa;

27 d) City failed to respond to all written objections submitted as required by H&S Code §
28 33363;

1 e) The Redevelopment Plan does not comply with substantive requirements of H&S Code
2 § 33352(c);

3 f) Because defendants' factual findings are not supported by substantial evidence in the
4 record, and because defendants failed to comply with all statutory requirements, the Redevelopment
5 Plan, the Ordinance by which it was approved and adopted, and all actions and proceedings taken
6 in accordance with the approval and adoption thereof, resulting in inclusion of land, buildings and
7 improvements which are not blighted, are null and void.

8 In response, the City argues:

9 1. The Project Area is predominantly urbanized.

10 2. There is substantial evidence in the record to support the finding that the project area is
11 blighted, both physically and economically, and that the blighting conditions constitute a burden on
12 the community.

13 3. A Project Area may include non-blighted property. In addition, the boundaries of the
14 project area were re-evaluated and refined during the plan adoption process. Furthermore, not all
15 properties in a project area must be blighted.

16 4. The City Council responded fully to all written objections.

17 5. There is no requirement that a redevelopment plan contain specific projects.

18 II. Requests for Judicial Notice

19 After the initial briefing, both sides filed Reply Briefs, and both sides requested the court to
20 take judicial notice of certain items. A fundamental rule of administrative law is that a court's
21 review is confined to an examination of the record before the administrative agency at the time it
22 takes the action being challenged. Gonzales v. City of Santa Ana (1993) 12 Cal.App.4th 1335,
23 1342. A court may exercise its discretion to augment an administrative record if the evidence is
24 relevant and if it was either improperly excluded during the administrative process or it could not,
25 in the exercise of reasonable diligence, have been presented before the administrative decision was
26 made. CCP § 1094.5(e); Western States Petroleum Association v. Superior Court (1995) 9
27 Cal.App.4th 559, 573. Plaintiffs here offer no explanation why their new evidence could not have
28 been submitted sooner, particularly when they were actively involved throughout the administrative

1 process. The court finds that all of the items of which plaintiffs ask the court to take judicial notice
2 either are irrelevant or could have been presented before the administrative decision was made.

3 Therefore, the court hereby denies plaintiffs' request to take judicial notice of any of the
4 requested items. As to the Simon Property Group's self description, the court finds that a self-
5 serving statement on a company's own web site is not a proper subject of judicial notice absent
6 additional direct proof of the truth of the statements. As to information contained on the Santa
7 Rosa Police Department's website concerning how the Police Department tabulates data, this data
8 is irrelevant in the absence of any evidence of exactly how Santa Rosa's crime statistics are
9 tabulated. The court also agrees that there is no explanation of why this evidence was not raised by
10 plaintiffs during the plan adoption process. Concerning the City Zoning Code sections, the court
11 does not need to take judicial notice of sections obtained on September 28, 2007 and intends to
12 simply apply all laws in effect on the date of the plan adoption, June 20, 2006. As to the
13 Declaration of Cheryl Lynn Koire, the information concerning vacant lots is irrelevant since the
14 exhibits to her declaration are not capable of immediate and accurate information under Evidence
15 Code § 452(h). As to a decision by another trial court in another county, such a decision has no
16 precedential value and is also legally irrelevant.

17 Defendants ask the court to take judicial notice of H&S Code §§33030 and 33031 as
18 amended in 1993 by Assembly Bill 1290, found at Statutes 1993, Chapter 492, attached as
19 Exhibit A to Defendants' Request for Judicial Notice. As plaintiffs have no objection, the court
20 hereby grants the request.

21 III. Standard of Review

22 Both sides agree that the standard of review is the substantial evidence test (although, as
23 usual, the devil is in the details of how to apply the standard...). The court does not reweigh the
24 evidence or exercise its independent judgment but confines itself to determining whether the findings
25 and determinations of inferior bodies were supported by substantial evidence. Morgan v.
26 Community Redevelopment Agency (1991) 231 Cal. App. 3d 243, 257 citing In Re
27 Redevelopment Plan for Bunker Hill (1964) 61 Cal. 2d 21.

28 Again, the scope of judicial review of an agency's decision to adopt a redevelopment plan

1 is quite limited. The trial court reviews the administrative record to determine whether the findings
2 and decision of the legislative body are supported by substantial evidence. San Franciscans
3 Upholding the Downtown Plan v. City and County of San Francisco (2002) 102 Cal.App.4th 656,
4 674. In the application of this standard, “[t]he decisions of the agency are ... given substantial
5 deference and presumed correct.” (Ibid.) “[T]he reviewing court must resolve reasonable doubts
6 in favor of the administrative findings and determination.” (Ibid.) And where conflicting inferences
7 can be drawn from the evidence, a court must accept all reasonable inferences supporting the
8 administrative findings. Evans v. City of San Jose (2005) 128 Cal. App. 4th 1123, 1146.

9 On the other hand, the substantial evidence standard requires that such evidence be of
10 ponderable legal significance. It must be reasonable in nature, credible, and of solid value; it must
11 actually be substantial proof of the essentials which the law requires in a particular case. Friends of
12 Mammoth v. Town of Mammoth Lakes (2000) 82 Cal.App.4th 511, 538. If a specific finding
13 required by the CLR cannot be made from the evidence in the administrative record, the evidence
14 is not substantial proof of the essentials which the law requires, and the finding is not supported by
15 substantial evidence. Ibid.

16 Not surprisingly, the parties here advocate quite different applications of the above stated
17 rules to the record before the court. According to plaintiffs, “[T]o invoke the ‘extraordinary
18 powers of community development’ [which include eminent domain] it is not sufficient to issue a
19 report and to adopt an ordinance speaking in the statutory language.” [citations].... “....[T]he
20 language of the Community Redevelopment Law sets an exacting standard communities must meet
21 in order to establish a redevelopment project area.” [citations.]In short, the courts are required
22 to be more than rubber stamps for local government.” [citations]. (Plaintiffs’ opening brief, at
23 3:21-4:3.) At oral argument, they urged that there has to be substantial evidence to support every
24 element of the statute, stating that it’s a “tremendously heavy, tedious job...” Again at oral
25 argument: “my apologies for the task we’ve given you. It’s going to be less than exciting. It’s
26 going to be tedious.”

27 According to the defendants, what plaintiffs really want is for the court to reweigh the
28 evidence supporting blight, take new evidence in the form of matters to be judicially noticed, and

1 reject the administrative action based on differences of opinion. In their view, the Evans case best
2 elucidates the standard.

3 IV. Failure to Exhaust Administrative Remedies/Standing

4 In their Reply Brief and at oral argument, defendants contend that plaintiffs' case must fail
5 first of all because they failed to exhaust their administrative remedies. Specifically, they argue that
6 although plaintiffs and some of their representatives were actively involved in the plan adoption
7 process, submitting numerous letters and speaking at several meetings (plaintiff Tokerud herself
8 spoke during at least three meetings of the Redevelopment Agency, spoke at two Planning
9 Commission meetings, and spoke at eight Project Area Committee meetings), nevertheless, not until
10 plaintiffs' opening brief did the plaintiffs criticize the methodology and conclusions of the City's
11 consultants, Keyser Marston Associates, Inc. ("KMA"), dispute calculations, and raise new
12 "evidence" not presented during the plan adoption process.

13 As noted in Evans v. City of San Jose, *supra*, (2005) 128 Cal.App.4th 1123 at 1136,
14 "...the CRL expressly provides for a comprehensive administrative review process prior to the
15 adoption of a redevelopment plan. ([H&S Code] §§33360-33364.) Participation in that review
16 process is a jurisdictional prerequisite to bringing a subsequent court action challenging the adoption
17 of the redevelopment plan. Redevelopment Agency v. Superior Court (Birbeck) (1991) 228
18 Cal.App.3d 1487, 1492-149. A challenger who has participated in the administrative process
19 must also show that the issues raised in the judicial proceeding were raised at the administrative level.
20 (Morgan v. Community Redevelopment Agency (Morgan) (1991) 231 Cal.App.3d 243, 258,
21 284 Cal.Rptr. 745.)"

22 Thus, the question presents itself: have the plaintiffs here shown that the issues they now raise
23 were raised at the administrative level? To answer that question, the court turns to an analysis of
24 the issues raised in the administrative record below. In her letter of April 7, 2006
25 (AR:XII:192:3096), Tokerud requested that the Julliard Park Neighborhood be withdrawn from
26 the Plan area. In support of her argument she stated: "Also being challenged is the validity of the
27 information in the Keyser Marston report being used to justify the adoption of the Redevelopment
28 Plan. We believe that we can prove that the report being used is plagued with errors, and that it

1 lacks substantial evidence to support a blight finding in the project area." She also stated: "In
2 employing this method to survey the Julliard Park Neighborhood 'findings' in the Keyser Marston
3 report we have not found any properties with serious code violations or buildings in which it is
4 unsafe to live or work. I am a General Contractor and have specialized experience in making this
5 determination."

6 In her 7-page single spaced Written Objections to the Formation of the Gateways
7 Redevelopment Area, (AR:XXIII:317, 6109-6115), Tokerud objects to 6 parts of the KMA
8 Report. As to Section B, Physical Blighting Conditions, she complains that the analysis of code
9 violation data is based on increased code enforcement in the Project Area, skewing the results in
10 favor of a finding of blight, and also that most violations were corrected. She claims that Uniform
11 Building Code categories of serious code violations should have been used as opposed to the
12 standards employed by Santa Rosa. She objects to the lack of addresses. She objects to the finding
13 that small building and lot sizes cause blight, and she complains that the Report fails to show how
14 these conditions and a lack of parking correlate to a lack of utilization, or prevent the economically
15 viable use of property. She states that houses in the Project Area, being some of the oldest in the
16 City, should not be compared to newer housing, stating that existing housing in the Project Area
17 provides needed affordable housing. She comments that smaller apartment sizes are compared to
18 newer apartments and that no evidence is given as to how this causes blight. She claims that most
19 parking stalls at Coddington Mall are filled with shoppers, and that spaces are occupied and
20 economically viable. According to her, the very fact that the Simon Group recently purchased a
21 50% managing ownership interest shows that the mall is not blighted.

22 As to Section C, she claims that the only example of economic development being prevented
23 is in the South Santa Rosa Avenue subarea, which was omitted from the plan. She states there will
24 always be properties that are adjacent to other properties with different zoning and that this
25 condition cannot be eliminated by redevelopment.

26 With regard to Section D, she argues that the Report states that lots less than 20,000 square
27 feet do not meet current industry standards, whereas city zoning codes allow commercial
28 development on lots as small as 6000 square feet.

1 As to Section E, she remarks that the average assessed value per square foot for residential
2 properties was only 3% lower and non residential uses only 10% lower, claiming these amounts are
3 negligible and do not support a finding of blight. She argues the decline in sales tax revenue is due
4 to other factors such as code enforcement sweeps, down zoning of property, etc. She further claims
5 that no specific examples of how lower sales prices product blight. She states that although the
6 Report states that 239 hazardous material release sites are listed in the public record, the report fails
7 to state the current status of the sites. She further complains that the Report does not indicate that
8 properties with low lease rates are not able to support viable businesses, claiming that lower lease
9 rates have enabled many small businesses to survive.

10 With regard to Section F, she states that the Report says that areas with more than 10%
11 vacant land is excessive, finding this percentage to be arbitrary. She also claims that the Report's
12 map showing vacant lots is grossly inaccurate (although she provides no details about which lots she
13 is referring to, nor the dates of her drives and walks through the Project Area). Finally, as to Section
14 G, she claims that high crime rates are typical of central districts in cities and that this is the
15 responsibility of the Police Department, not the Redevelopment Agency.

16 The court presents this detailed description of Tokerud's objections in order to carefully
17 consider defendants' arguments that plaintiffs have failed to exhaust their administrative remedies.
18 As to this objection, the court finds that plaintiffs did indeed make specific objections to KMA's
19 methods of gathering and analyzing information. However, nowhere in the administrative record
20 did the court find any objections to KMA's qualifications (except for the vague comment made by
21 Tokerud in the above-mentioned letter, where she urged the City to "fire" KMA based on supposed
22 inaccuracies in its Report).

23 In sum, the court finds that the plaintiffs have preserved each of the issues raised in the
24 Tokerud letter referred to above, and may therefore argue each of these issues now. However, the
25 court will not consider any argument or evidence relating to KMA's qualifications or lack of
26 expertise.

27 Putting aside for the moment the content of her objections, however, at oral argument
28 defendants contended that Tokerud is not an "affected property owner" within the meaning of

1 H&S Code § 33363 because she does not own property in the project area. That section requires
2 the appropriate legislative body, here the City of Santa Rosa, to evaluate all evidence and testimony
3 for and against the adoption of the plan and make written findings in response to each written
4 objection of an "affected property owner or taxing entity."

5 Ms. Tokerud lives in an area that by the time of the hearing in question had been deleted
6 from the project area. At oral argument, plaintiffs argued that because Tokerud is a resident of the
7 City of Santa Rosa and therefore a taxpayer, she is therefore an "affected person" and her
8 objections must be considered. Defendants argued that "affected persons" mean only those living
9 or paying taxes within the project area itself.

10 No cases were cited in support of either proposition. Nor could the court find any.
11 Defendants did point out at oral argument that the term "affected taxing entity" is defined in H&S
12 Code § 33353.2 as "any governmental taxing agency that levies a property tax on all or any
13 portion of the property located in the adopted project area in the fiscal year prior to the fiscal year
14 in which the report prepared pursuant to Section 33328 is issued, or in any fiscal year after the date
15 the redevelopment plan is adopted."

16 Since the definition of affected taxing entity is directly tied to a governmental taxing agency
17 that levies a property tax on all or any portion of the property located in the adopted project area,
18 it can be argued that the term "affected property owner" must similarly be limited to property
19 owners who pay taxes on property located in the adopted project area. This would exclude Tokerud.

20 Plaintiffs, however, urge the court to include in the definition of "affected property owners"
21 all those who pay taxes within the City. In support thereof, they argued at oral argument that CCP
22 § 863 permits "any interested person" to file a reverse validation action under CCP § 860.
23 Although the question of who qualifies to be an "affected person" under H&S Code § 33363 may
24 not have been decided, the question of what constitutes an "interested person" entitled to file a
25 lawsuit is well settled. In Torres v. City of Yorba Linda (1993) 13 Cal.App.4th 1035, 1042-
26 1044, the court analyzed in detail the case law to date construing the interested person language
27 in section 863. Because of the detail, this court quotes extensively from it as follows:
28

1 Three reported cases have discussed the use of the phrase "any interested
2 person" in section 863. In Card v. Community Redevelopment Agency
3 (1976) 61 Cal.App.3d 570, 131 Cal.Rptr. 153, citizens, residents and
4 taxpayers of the city covered by an existing redevelopment plan and who owned
5 property assessed for taxes by the county, successfully challenged a purported
6 amendment to the plan. On appeal, defendant questioned plaintiffs' standing
7 to sue. The appellate court summarily rejected the claim relying on the parties'
8 stipulation which, in part, stated each plaintiff was "a citizen, resident and
9 taxpayer of the city and 'a person interested in the matter of the amendments
10 to the redevelopment plans....'" (Id. at pp. 574-575, fn. 6, 131 Cal.Rptr.
11 153.)

12 Régus v. City of Baldwin Park (1977) 70 Cal.App.3d 968, 139 Cal.Rptr. 196
13 involved a validation action by individuals who were residents and *1043
14 taxpayers of the city and who owned real property assessed for taxes by the
15 county and other taxing agencies, and an unincorporated association consisting
16 of city residents. The trial court found plaintiffs lacked standing because none
17 of them owned property within the redevelopment project's boundaries. The
18 Court of Appeal reversed. "We think it unlikely the Legislature intended to
19 limit review of such projects to actions initiated by the agency itself or by
20 residents of the project area, given the presumptively disadvantaged and
21 blighted condition of a redevelopment project area, which may be largely vacant
22 or in a state of disrepair and disuse. As taxpayers of the City of Baldwin Park
23 and of the County of Los Angeles, plaintiffs have a financial interest in the
24 outcome of this proceeding, in that the tax increment financing of the Project
25 will divert tax revenues from the taxing agencies to which plaintiffs pay taxes to
26 the treasury of the Redevelopment Agency. Such a financial interest is likely to
27 motivate plaintiffs to prosecute the action vigorously and provides sufficient
28 basis to give them standing...." (Id. at p. 972, 139 Cal.Rptr. 196.)

17 Finally, Citizens Against Forced Annexation v. County of Santa Clara (1984)
18 153 Cal.App.3d 89, 200 Cal.Rptr. 166, involved an action by an
19 unincorporated association and several individuals challenging the validity of a
20 city's efforts to annex several territories. The unincorporated association
21 consisted of individuals who were residents, landowners or voters of the city or
22 the territories. The trial court found that 21 individual plaintiffs, who were
23 landowners, residents or registered voters of particular annexed territories, and
24 the association could sue but limited their action to 19 territories.

21 Plaintiffs appealed. The Court of Appeal upheld the trial court's finding the 21
22 individual plaintiffs had standing to challenge the annexation of the 19
23 territories because they claimed to be landowners, residents or registered voters
24 in the affected areas. (153 Cal.App.3d at p. 95, 200 Cal.Rptr. 166.) But it
25 reversed as to 10 additional territories. The appellate court concluded the
26 association had standing concerning the 10 territories since its membership
27 included persons who were property owners, residents or voters in these areas.
28 (Id. at p. 100, 200 Cal.Rptr. 16.)

In light of the above, a plaintiff does not have to own property within the project area in order to have standing to sue under CCP § 863. The court agrees with plaintiffs that residents and

1 taxpayers of the municipality in which a redevelopment project is located have standing to initiate
2 a validation proceeding if tax increment financing of the redevelopment project at issue will divert
3 tax revenues from the taxing agencies to which plaintiffs pay taxes to the treasury of the
4 redevelopment agency.

5 Thus, the court has no trouble finding that plaintiff Kay Tokerud has standing to bring this
6 action. A fortiori, and as plaintiffs pointed out, if she has standing to file a lawsuit to invalidate the
7 redevelopment plan, surely she has standing to send in letters objecting to it beforehand.

8 V. Attacks on KMA

9 In their opening and reply briefs, plaintiffs devoted many pages of argument attacking
10 virtually every method employed by KMA to document blight in the Project Area. In their reply
11 brief, they also criticized KMA's expertise, mostly based on materials which this court has already
12 ruled are inadmissible. As stated above, the court will not consider any new evidence or argument
13 concerning KMA's qualifications, finding the plaintiffs failed to exhaust their administrative
14 remedies to preserve this argument. Nevertheless, the court will simply note that the same
15 consultant, KMA, performed the blight analysis in Evans, supra. In that case, the court found that
16 the KMA firm was "a qualified consultant in the field of redevelopment." Evans, supra at 690.

17 KMA also acted as a consultant for the City of San Francisco in San Franciscans, supra, where
18 the court referred to it as a "real estate valuation expert." San Franciscans, supra at 681, 682.
19 As against an attack on KMA to the effect that its economic analysis there was "inadequate,
20 untrustworthy and insufficient to support the City's Project approval because it allegedly did not
21 contain all the information required by article 11 of the San Francisco Planning Code for a permit
22 application to demolish an historic category I building, " the court specifically found that the
23 provisions of the Planning Code were irrelevant to the validity of the City's approval of the subject
24 Project. Ibid at 683.

25 As to KMA's methods, plaintiffs here complain that KMA gathered data regarding code
26 enforcement activities using City employees; that the blight conditions were based on local code
27 violations rather than the Community Redevelopment Law; that the surveyors conducted superficial
28 sidewalk surveys; that the surveys relied only on visual inspections, resulting in flawed data; that the

1 survey sheets included many factors that did not necessarily indicate blight; that there was no
2 evidence of unsafe or unhealthy conditions, as there was no "nexus" between code violations and
3 unsafe conditions; that KMA's tabulation of the data was devoid of any meaningful analysis; that
4 KMA improperly aggregated criteria; that the survey lacked uniformity and contained unverifiable
5 conclusions; and that KMA's block-by-block methodology and "overbroad definitions" of blight
6 did not conform to CRL requirements.

7 The court disagrees with plaintiffs' sweeping denunciation of KMA's methods. Here, as
8 the court found in Evans, while not every subarea contained every type of blight, it is necessary only
9 that at least one type of physical blight and one type of economic blight [be] sufficiently prevalent
10 to support a finding that an area is blighted." Evans at 1147. The court in Evans also cited Friends,
11 supra in noting that the CRL "does not prescribe a particular methodology" for documenting
12 blighting conditions. Ibid.

13 As to KMA's methods, defendants correctly point out that in Evans, KMA employed much
14 of the same methodology used in the case at bar. It divided the Project Area in subareas and
15 performed a similar type of analysis as that employed in Evans. It consulted code violations data.
16 It conducted interviews with city staff. It reviewed city records. It talked to real estate brokers.
17 It consulted trade publications. It studied the relevant demographics. It studied census data and
18 state regulatory agency records. Here, as in Evans, plaintiffs argue that the underlying methodology
19 and analysis in the KMA report was faulty to such a degree that it cannot support a finding of blight.
20 Evans, supra, at 691. Like the plaintiffs in Evans, plaintiffs here refer the court to various cases
21 such as County of Riverside v. City of Murrieta (1998) 65 Cal.App.4th 616, 76; Friends, supra;
22 Beach-Courchesne v. City of Diamond Bar (2000) 80 Cal.App. 4th 388; and Graber v. City of
23 Upland (2002) 99 Cal.App.4th 424. These cases do provide precedent for invalidating a
24 redevelopment plan for lack of substantial evidence of blight in the record. However, this court
25 does not find them controlling.

26 It is true that objectors here did raise claims challenging the underlying report during the
27 administrative proceedings, albeit in a much more general fashion than now argued. However, on
28 their facts the cases of Murrieta, Friends and Graber involved largely rural areas where the courts

1 found that there was insufficient evidence that the project area was predominantly urbanized, a key
2 finding in the blight analysis. Here the Project Area consists of neighborhoods in or near downtown
3 Santa Rosa. There is no question that the Project Area is "predominantly urbanized" (H&S Code
4 § 33030(b)(1).) In Diamond Bar, the project area was an "affluent suburban community"
5 "comprising rolling hills and valleys. Diamond Bar, supra at 398-399.

6 In sum, the court finds that the fact that different inferences or conclusions could have been
7 drawn, or that different methods of gathering and compiling statistics could have been employed,
8 is not determinative in a substantial evidence review. Evans, supra at 1148; San Franciscans, supra
9 at 674.

10 VI. Substantial Evidence of Blight

11 Everyone also agrees that a determination of blight is a prerequisite to redevelopment under
12 the Community Redevelopment Law. Beach-Courchesne v. City of Diamond Bar (2000) 80
13 Cal.App.4th 388, 395. The purpose of the Community Redevelopment Law is to provide a means
14 of remedying blight where it exists, not to serve as a vehicle for cash-strapped municipalities to
15 finance community improvements. Ibid at 407. Determinations of blight are to be made on the
16 basis of an area's existing use, not its potential use. Friends, supra, at 554.

17 To qualify as a blighted area, property must satisfy each of the following requirements:

18 (1) The area must be "predominantly urbanized" (H&S Code §33030(b)(1)).

19 (2) The area must be "characterized" by one or more statutorily defined physical conditions
20 that cause blight (H&S Code §33030(b)(2)(A)).

21 (3) The area must be "characterized" by one or more statutorily defined economic
22 conditions that cause blight (H&S Code §33030(b)(2)(A)).

23 (4) The combination of physical and economic conditions causing blight must be "so
24 prevalent and so substantial that it causes a reduction of, or a lack of, property utilization of the area
25 to such an extent that it constitutes a serious physical and economic burden on the community which
26 cannot reasonably be expected to be reversed or alleviated by private enterprise or governmental
27 action, or both, without redevelopment" (H&S Code §33030(b)(1)).

28 Here, no one denies that the area at issue is "predominantly urbanized." Thus, the inquiry

1 turns on whether defendants have satisfied the remaining three criteria.

2 1. Physical Conditions (H&S Code §33031(a).

3 To be a blighted area, the property must be characterized by one or more (not all) statutorily
4 defined physical conditions that cause blight. Physical conditions that cause blight are one or more
5 of the following:

6 (1) Buildings in which it is unsafe or unhealthy for persons to live or work; these conditions
7 can be caused by serious building code violations, dilapidation and deterioration, defective design
8 or physical construction, faulty or inadequate utilities, or other similar factors. (H&S Code
9 §33031(a)(1)).

10 (2) Factors that prevent or substantially hinder the economically viable use or capacity of
11 buildings or lots: this condition can be caused by substandard design, inadequate size given present
12 standards and market conditions, lack of parking, or other similar factors. (H&S Code
13 §33031(a)(2)).

14 (3) Adjacent or nearby uses that are incompatible with each other and which prevent the
15 economic development of those parcels or other portions of the project area. (H&S Code
16 §33031(a)(3)).

17 (4) The existence of subdivided lots of irregular form and shape and inadequate size for
18 proper usefulness and development that are in multiple ownership. (H&S Code §33031(a)(4).)

19 Code violations alone do not establish blight. Simply because building code violations exist,
20 or buildings are deteriorated or dilapidated, or suffer from defects in design or construction, or fail
21 to comply with seismic safety codes do not constitute substantial evidence to support the conclusion
22 that those buildings are unsafe or unhealthy for human occupancy. Accordingly, a report that
23 identifies such violations without going the further step of discussing how those violations result in
24 unsafe or unhealthy buildings does not constitute substantial evidence to support a finding of
25 physical blight. Friends, supra at 554.

26 Here, there is plenty of evidence of physical blight. Several neighborhoods in the Project
27 Area have long suffered from serious building code violations. (AR:XIV:223A:3335.) Reviewing
28 the 14 categories of serious code violations, even if the court disagrees that all 14 categories

1 represent examples of physical blight, there is abundant evidence of examples of illegal dumping,
2 excessive trash and debris, illegal living quarters on commercial property, electrical safety problems,
3 structural damage and sewage leaks. (AR:XIV:223A:3339-3345.)

4 The Report to Council includes a chart that compared the number of reported serious code
5 violations in each subarea with the average for the City, as well as a Project Map area showing that
6 these code violations occurred throughout the Project Area. (AR:XIV:223A:3343-3344). Again,
7 though plaintiffs urge the court to disregard these findings because there is no "nexus" between
8 them and a finding of unsafe or unhealthy conditions, the court agrees with defendants that
9 "...common sense and human experience does [sic] not require an explanation that conditions such
10 as lack of bathroom facilities, mold, exposed wiring, leaking sewage, gas and water lines, non-
11 functioning fire alarms, abandoned appliances, rat and cockroach infestation, unsafe stairs, collapsing
12 structures, illegal sewer and electrical hookups, and piles of exposed trash and debris create unsafe
13 and unhealthy conditions in which to live or work. All of these conditions and more are
14 documented in the Report to Council. AR:XIV:223A:3479 - AR:XV:223B:3539. And while
15 being awakened by a crowing rooster may admittedly not pose a health or safety issue, (Plaintiffs'
16 Opening Trial Brief 15:21-23; 16:21-22; 17:2), keeping poultry or other farm animals on small
17 urban lots clearly do [sic]." Defendants' Reply Brief, 11:10-18.

18 The Report to Council also documented numerous instances of factors that substantially
19 hinder the economically viable use or capacity of buildings or lots. It found that the commercial and
20 industrial lot and building sizes in eight of the subarea were well below current market standards.
21 (AR:XIV:223A:3346:3347, 3351, 3353.)

22 The Report also concluded there was a paucity of adequate on-site parking capacity in the
23 Project Area. (AR:XIV:223A:3349-3354). Similarly, it also found that the sizes of single-family
24 homes and apartment units within the Project Area were generally smaller than newer residential
25 units in the rest of the City. (AR:XIV:223A:3343-3356)

26 The court also finds substantial evidence that the Coddington Mall is outdated and very
27 difficult to operate without a major renovation. (AR:XV:223B:3712-3713; XVIII:254:4731-
28 4732.)

1 The court also notes that the project area contains adjacent properties with incompatible uses.
2 (AR:XIV:223A:3359, 3360, 3364.)

3 2. Economic Conditions (H&S Code §33031(b))

4 In addition to physical conditions supporting a finding of blight, there must be economic
5 conditions supporting a finding of blight. These conditions can be one or more of the following:

6 (1) Depreciated or stagnant property values or impaired investments, including, but not
7 necessarily limited to, properties containing hazardous waste that required the use of agency
8 authority to remediate. (H&S Code §33031(b)(1))

9 (2) Abnormally high business vacancies, abnormally low lease rates, high turnover rates,
10 abandoned buildings, or excessive vacant lots within an area developed for urban use and served by
11 utilities. (H&S Code §33031(b)(2))

12 (3) A lack of necessary commercial facilities that are normally found in neighborhoods,
13 including grocery stores, drug stores, and banks and other lending institutions. (H&S Code
14 §33031(b)(3).)

15 (4) Residential overcrowding or an excess of bars, liquor stores, or other businesses that cater
16 exclusively to adults that has led to problems of public safety and welfare. (H&S Code
17 §33031(b)(4))

18 (5) A high crime rate that constitutes a serious threat to public safety and welfare. H&S
19 Code §33031(b)(5).

20 Here, the evidence showed that there is substantial evidence of economic blight. The Project
21 Area suffers from significantly lower property values than comparable properties in the remainder
22 of the City. (AR:XIV:223A:3366, 3367) Plaintiffs argue that assessed property value simply does
23 not tell anything about the value of a property, insisting that there should have been two appraisals
24 of property within the Project Area. However, the court has found no cases where multiple
25 appraisals were required to demonstrate the existence of impaired investments or stagnant property
26 values.

27 In addition, property sales prices in the Project Area for industrial, retail, office and single
28 family residential properties are all significantly lower than for similar properties outside the Project

1 Area. (AR:XIV:223:3371, 3374, 3375.) Plaintiffs contend that the data on low property sales
2 prices should have been weighted, based on location or age of building stock. Since this argument
3 was not raised below, the court finds this particular attack on methodology to be made too late.
4 Thus, the court finds that property in the Project Area is less valuable than property outside the
5 Project Area.

6 There is substantial evidence of the decline in the taxable sales of goods in the Project
7 Area. (AR:XIV:223:3367-3370.) Again, plaintiffs attack this finding, arguing that 2005 data
8 should have been included in the KMA Report. However, it was not, and the court does not find
9 that it was necessary to include it.

10 In addition, there is evidence that Coddington Mall has experienced a 25% decline in
11 visitor counts between 1990 and 2004. (AR:XIV:223:3370) Interestingly, plaintiffs have
12 analyzed the profitability of Coddington, finding that because the Simon Group purchased a 50%
13 interest in the mall, it would not have done so had it not been a profitable investment. However,
14 this argument ignores the facts that visitor counts at Coddington have steadily declined for 10
15 years, not just since 9/11; that 23% of the ground floor mall space is vacant; that another 10%
16 of the ground floor mall space currently has leases that are about to expire without a viable
17 replacement tenant; that Coddington has recently had to provide significant tenant concessions;
18 that rents are substantially lower there than at other regional malls. (AR:XV:223B:3712-3713.)
19 On this record, the court has little difficulty in finding that Coddington is exactly the type of
20 impaired investment that constitutes economic blight that requires redevelopment to stave off its
21 continuing decline.

22 The Project Area is characterized by abnormal lease rates, high business vacancies and
23 excessive vacant lots. (AR:XIV:223:3381-3387.) As to the lease rates, as shown in the Report,
24 properties in the Project Area cannot garner the same sale lease rates as those outside the Project
25 Area because the size and configuration of the Project Area sites don't meet current needs. This
26 is, again, one of the conditions that the courts have relied upon to find economic blight in a
27 proposed project area. Blue v. City of Los Angeles (2006) 137 Cal.App.4th 1131, 1152.

28 As to the excessive vacant lots, plaintiffs vigorously attack this finding, mostly based on

1 anecdotal evidence of photos attached to the Koire declaration which this court has already found
2 inadmissible. As to plaintiff Tokerud's personal observations (AR:XXIII:317: 6114, 6115) with
3 regard to vacant lots, these lack the kind of specificity required to refute the Report's findings.
4 When the court confines itself to the record, it finds that there are an excessive number of vacant
5 lots in the Dutton Avenue/9th Street and North Santa Rosa Avenue subarea.

6 The Project Area suffers from a high crime rate that seriously threatens public safety and
7 welfare. (AR:XIV:223:3387, 3391-3392) As to this finding, plaintiffs first object to the
8 methodology used to support the finding. However, on this point the court has already ruled that
9 plaintiffs failed to exhaust their administrative remedies below. In any event, no evidence was
10 submitted contradicting the information regarding crime rates in the Report.

11 Next, Tokerud suggests that a high crime rate is a police problem, not a redevelopment
12 problem, leading the court to conclude that Tokerud ought to address her concerns to the
13 legislature, rather than the City. After all, H&S Code § 33031(b)(5) expressly permits a finding
14 of a high crime rate that constitutes a serious threat to public safety and welfare as evidence of
15 blight.

16 In light of all the above, the court concludes that the Report supplied substantial evidence
17 for the City's finding of blight in the Project Area under the statutory criteria.

18 VII. Evidence that Blighting Conditions Constitute a
19 Burden on the Community Requiring Redevelopment

20 In addition to findings of economic and physical blight, the City must also find that the
21 blighted condition of the project area is such that it constitutes "a serious physical and economic
22 burden on the community" which cannot reasonably be expected to be alleviated or reversed
23 without redevelopment. (H&S Code § 33030(b)(1).) Here, the court finds there is substantial
24 evidence of such burden.

25 Referring to Table 30 in the Report, serious physical and economic blighting conditions are
26 found in every subarea in the Project Area. (AR:XIV:223A:3396-3400) Unfortunately, and as
27 described in the Report, the City lacks sufficient resources to effectively alleviate the types of
28 building code violations and gang activity that exist in the Project Area. Nor can current rents

1 support the level of investment necessary to rehabilitate industrial and retail properties to current
2 market standards. (AR: XIV223A:3404.)

3 At oral argument, plaintiffs insisted that there must be a finding that the City "can't"
4 remedy the documented defects, and here there is no such evidence. The court disagrees, finding
5 that the record before it adequately addressed the necessity for redevelopment in the Project Area
6 to alleviate the conditions of blight. In sum, there is substantial evidence that without a significant
7 infusion of public assistance, planning, tax incentives and investment, the private market cannot be
8 expected to revitalize the Project Area. See San Franciscans Upholding the Downtown Plan, *supra*
9 at 704.

10 VIII. Miscellaneous Objections

11 The court next turns to an analysis of several other objections to the KMA report.

12 First, the court agrees with defendants that a project area may include non-blighted area that
13 is necessary for integrated planning. In other words, not all properties in a project area must be
14 blighted. Hesperia Citizens for Responsible Development v. City of Hesperia (2007) 151
15 Cal.App.4th 653, 665.

16 Next, the court finds that the City responded adequately to all written objections. At pages
17 29 through 34 of their Reply Brief, defendants exhaustively detail the written objections to the
18 Report and document their responses. The court finds nothing inadequate in the City's responses.

19 Finally, the court finds that there is no requirement that a redevelopment plan contain
20 specific projects. Once again, plaintiffs' interpretation of the CRL raises the bar far above that
21 dictated by any case to date. Plaintiffs essentially quibble over the use of the word "programs" as
22 used in the Report as opposed to the word "projects" which they claim are specifically required to
23 be set forth. The court finds no such requirement. Furthermore, the court finds that the
24 Implementation Plan contained as Exhibit 10 to the Report to Council fully provides the level of
25 specificity required by H&S Code § 33352(c). (AR:XV:223B:3675-3711)

26 IX. Conclusion

27 After poring over the 6,000- plus page administrative record; after considering the 200
28 pages of written briefs, exclusive of exhibits and declarations; having listened to several hours of oral

1 argument; and having conducted its own independent legal research, the court hereby renders its
2 Tentative Decision denying all of plaintiffs' requested relief. With the record and the scope of
3 review limited to the administrative record before it, the court finds that the City's adoption of the
4 Gateways Redevelopment Plan, including the finding of blight, was supported by the evidence.

5 In essence, were the court to adopt the standards alleged by plaintiffs to exist to support
6 appropriate findings of blight, almost no study would pass muster. And here the court is mindful
7 not only of Evans, where the very consulting group, KMA, was attacked in terms virtually identical
8 to the present case, but has also carefully considered the standards set out in Friends of Mammoth,
9 Beach-Courchesne v. City of Diamond Bar and the other cases where the court found insufficient
10 evidence of blight. And the court agrees with the defendants that factually, the case at bar is far
11 more similar to Evans than any of the other cited cases.

12 This action was brought as a validation action under CCP §§ 860 et seq. Plaintiffs' prayer
13 for injunctive and declaratory relief and for attorneys fees within this action depend entirely upon
14 their success in establishing the invalidity of the Gateways Redevelopment Plan. Since the court's
15 Tentative Decision is in favor of the City, plaintiffs' claims for injunctive and declaratory relief must
16 also fail. Thus, the court denies all further relief.

17 IT IS HEREBY ORDERED that judgment be entered in favor of defendant City of Santa Rosa
18 and against plaintiffs Kay Tokerud and Concerned Citizens of Santa Rosa Against Redevelopment
19 Law Abuse, Inc.

20 Dated: 01/26/08

21 
22 _____
23 HON. ELAINE RUSHING
24 JUDGE OF THE SUPERIOR COURT
25
26
27
28

PROOF OF SERVICE
(CCP 1013a, 2015.5; CRC 2008)

1 I am an employee of the Superior Court of Sonoma County, State of California. I am
2 over the age of 18 years and not a party to the within action. My business address is 1450
3 Guerneville Road, Santa Rosa, California, 95403.
4

5 On this date I served the attached:

TENTATIVE DECISION

6 on the following party to this action by placing a true and correct copy therein in a sealed
7 envelope, addressed as follows:
8

9 William T. Brooks, Esq.
10 Brooks & Hess
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19
20 [X] (BY MAIL) I placed each such sealed envelope, with postage thereon fully prepaid for
21 first-class mail, for collection and mailing at Santa Rosa, California, following ordinary business
22 practices. I am readily familiar with the Superior Court of Sonoma County for processing of
23 correspondence, said practice being that in the ordinary course of business, correspondence is
24 deposited in the United States Postal Service the same day as it is placed for processing.

25 I declare under penalty of perjury, under the laws of the State of California, that the
26 foregoing is true and correct and that this declaration was executed on February 26, 2008 at
27 Santa Rosa, California.

28 LUCE GONZALEZ
(Type or print name)


(Signature)