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For Responsible Development

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

HESPERIA CITIZENS FOR)
RESPONSIBLE DEVELOPMENT)

Plaintiff and Petitioner)

vs.)

CITY OF HESPERIA, CITY COUNCIL)
OF THE CITY OF HESPERIA, THE)
HESPERIA COMMUNITY REDEVELOP-)
MENT AGENCY, ALL PERSONS)
INTERESTED IN THE MATTER OF THE)
REDEVELOPMENT PLAN FOR)
THE HESPERIA REDEVELOPMENT)
PROJECT NO. 1 and Resolution No.)
2003-67, a Resolution adopting)
the Municipal Services Agreement)
made the 25th day of August, 2003)
for a gaming facility, and other)
gaming related uses, in the City)
of Hesperia, the validity of all)
proceedings theretofore taken or)
made for or in anyway connected)
with the adoption of Resolution)
2003-67, and Doe 1 through Doe 30,)

CASE NO: VCVVS 032290

FIRST AMENDED
COMPLAINT TO DETERMINE
VALIDITY OF PROCEEDINGS;
FOR DECLARATORY AND
INJUNCTIVE RELIEF, AND
FOR MANDAMUS

(Verified Complaint/Petition)

Defendants and Respondents)
_____)

Plaintiffs allege:

GENERAL ALLEGATIONS

Introduction:

1. This is a validation action which challenges the validity of Resolution No. 2003-67 which authorizes the construction of a Casino with the city limits of the City of Hesperia and Hesperia Redevelopment Project Area No. 1. Injunctive and declaratory relief are also sought to prevent Defendants' continued unlawful conduct.

Description of the Parties:

2. Plaintiff Hesperia Citizens For Responsible Development ("Hesperia Citizens") is an unincorporated association who's members include owners of real property, or real property interests, located within the Hesperia Redevelopment Project Area No. 1 ("Project Area") and/or the City of Hesperia, pay property taxes, and are interested parties in the matter which is the subject of this action.

3. Plaintiff Hesperia Citizens, and members of Plaintiff, have exhausted their administrative remedies.

4. Defendant City of Hesperia ("City") is a municipal corporation organized and existing under and by virtue of the laws of the State of California. Defendant City is a party interested in the matter which is the subject of this action.

5. Defendant Community Redevelopment Agency of the City of Hesperia ("Agency") is an agency established by the City of Hesperia pursuant to the California Community Redevelopment Law, California Health and Safety Code Sections 33000, *et seq.*

6. a. Defendant Agency is an agency of the State of California for the local performance of governmental functions authorized by the laws of the State of California within the boundaries of the Project Area.

b. Defendant Agency is responsible under the California Community Redevelopment Law for the implementation of the Hesperia Redevelopment Plan for the Project Area.

7. Defendant City Council of the City of Hesperia (defendant "City Council") is the duly constituted legislative body of Defendant City with powers under the Community Redevelopment Law.

8. Defendant City Council is the Hesperia Community Redevelopment Agency.

9. Defendants Doe 1 through Doe 30, inclusive, are persons, and public or quasi-public agencies that have been instrumental in or have participated in the adoption of Resolution No. 2003-67, and have wrongfully committed acts or omissions. Plaintiff does not know the true names and capacities of Defendants sued herein as Doe 1 through Doe 30, and Plaintiff will amend this Complaint to show their true names and capacities when the same have been ascertained.

Facts Applicable to All Causes of Action:

10. The Redevelopment Plan for the Hesperia Redevelopment Project No. 1 (attached as Exhibit "1") was adopted by Ordinance 178 on July 15, 1993 (attached as Exhibit "2") and amended by Ordinance 282 on July 16, 1999 (Exhibit "3"). (Redevelopment Plan)

11. On August 25, 2003, a public hearing, denoted a public meeting, was held by or on behalf of Defendants City, Agency and City Council for the purpose of considering the Resolution No. 2003-67 (attached as Exhibit "4") and a Municipal Services Agreement ("Agreement") (attached as Exhibit "5") which expressly authorized a "gaming facility in the City of Hesperia". Additional public meetings took place on August 4, 2003 and August 18, 2003.

12. Said Agreement expressly states that the term "The City" shall include the "City of Hesperia" and the "Community Redevelopment Agency of the City of Hesperia".

13. Gaming, as described in said Agreement includes, but is not necessarily limited to, slot machines, video poker games, as well as blackjack and other card/poker games.

14. Said Gaming Facility will be situated on a Fifty-Seven Acre Parcel that is located inside the boundaries of the City of Hesperia and the Project Area.

15. Other gaming related uses will be developed on said Fifty Seven Acre Parcel, including but not limited to:

- Hotel/Motel
- Recreational Vehicle Park
- Shopping Mall
- Theater (motion picture or live performances)
- Theme or Amusement Park
- Water Park
- Small-scale Amusement Park, including video arcades and miniature golf
- Bowling Center
- Restaurants/Coffee Shops/Snack Bars
- Night Clubs or Pars (includes live entertainment)
- Entertainment Venues (Stadiums or arenas)

16. Resolution No. 2003-67 and said Agreement make no provision for the 20% housing set aside required pursuant to Health and Safety Code § 33487.

17. Neither a gambling casino nor gaming is a use permitted under, or described in the Redevelopment Plan for the Project Area.

I

FIRST CAUSE OF ACTION
(Violation of Health and Safety Code §33426.5:
Against Defendants City, Agency and City Council.)

18. Plaintiff hereby realleges and incorporates by reference paragraphs 1 through 17, and each subparagraph thereof, of this First Amended Complaint.

19. Health and Safety Code § 33426.5 states in pertinent part:

"Notwithstanding the provisions of Sections 33391, 33430, 33433, and 33445, or any other provision of this part, an agency shall not provide any form of direct assistance to:

...

(c) A development or business, either directly or indirectly, for the acquisition, construction, improvement, rehabilitation, or replacement of property that is or would be used for gambling or gaming of any kind whatsoever including, but not limited to, casinos, gaming clubs, bingo operations, or any facility wherein banked or percentage games, any form of gambling device, or lotteries, other than the California State Lottery, are or will be played."

20. By the adoption of Resolution No. 2003-67, Defendants City, Agency, and City Council assisted in the development and construction of property that will be used for gambling or gaming in the Project Area in violation of Health and Safety Code § 33426.5.

21. By reason of the facts set forth above, Resolution No. 2003-67 is invalid, null and void.

II

SECOND CAUSE OF ACTION (Violation of Purposes of Redevelopment Law; Against Defendants City, City Council and Agency)

22. Plaintiff hereby realleges and incorporates by reference to paragraphs 1 through 21, and each subparagraph thereof, of this First Amended Complaint.

23. The purpose of Defendants' Resolution No 2003-67 and said Agreement is not to correct conditions of blight within the Project Area, but rather:

- a. To violate the laws of the State of California.
- b. To violate the provisions of the Community Redevelopment Law.
- c. To encourage and promote blight.

24. Defendants' adoption of Resolution 2003-67 unlawfully deprives the citizens of the City of Hesperia, as well as Defendants City and Agency, of the safeguards which exist for development inside a redevelopment project area including, but not limited to, compliance with the Redevelopment Plan for Hesperia Redevelopment Project Area No. 1, the Rules for Participation, and the provisions, covenants and conditions that would be required in a Disposition and Development Agreement.

25. The purposes set forth in paragraphs 11 and 15:

a. Are not lawful uses of the powers granted by the California Community Redevelopment Law.

b. Are not a public use within the meaning of Article I, Section 19 of the California Constitution.

c. Are an unlawful diversion of tax increment in violation of Article XVI, Section 16 of the California Constitution.

26. Defendants' Resolution No. 2003-67 was not adopted for lawful purposes for redevelopment within the meaning of Health and Safety Code §§ 33020, 33021, 33030, 33031, 33050, 33070 and 33071 or any, or each of them.

27. By reason of the facts set forth above, Resolution No. 2003-67 is invalid, null and void.

III

THIRD CAUSE OF ACTION
(Blight Does Not Exist in the Fifty Seven Acre
Portion of the Project Area.

Against Defendants City, City Council and Agency)

28. Plaintiff hereby realleges and incorporates by reference paragraphs 1 through 27, and each subparagraph thereof, of this First Amended Complaint.

29. The Community Redevelopment Law, Health and Safety Code §§ 33000 *et seq.*, requires that a project area is a blighted area. The Fifty Seven Acre parcel upon which a gambling casino is authorized pursuant to Resolution No. 2003-67 is vacant, un-urbanized land and is not subject to blight.

30. The Fifth Seven Acre Parcel in the Project Area does not continue to be characterized or predominated by any of the elements of "blight" as set forth in Health & Safety Code §§ 33030 and 33031.

31. The Fifty Seven Acre Parcel in the Project Area, in fact, does not exhibit deteriorating structures wherein the inhabitants of the area are subjected to physical dangers or health hazards, nor does it suffer from economic dislocation, deterioration, or disuse which cannot be remedied by private or governmental action without redevelopment.

32. By reason of the facts set forth above, development as authorized pursuant to Resolution No. 2003-67 is invalid, null and void.

IV

FOURTH CAUSE OF ACTION
(Failure to Lawfully Conduct Municipal Affairs;
Against Defendants City, City Council and Agency)

33. Plaintiff hereby realleges and incorporates by reference paragraphs 1 through 32, and each subdivision thereof, of this First Amended Complaint.

34. The adoption of Resolution No. 2003-68 by Defendants City, Agency, and City Council is in direct violation of California law in that:

a. The development of the gambling casino by Defendants is in violation of Penal Code §§ 330 et seq.

b. The development of the gambling casino by Defendants permits a gaming club in the City of Hesperia and Redevelopment Project Area 1 in violation of Business and Professions Code § 19819.

c. The construction of a gambling casino in the Project Area is in violation of Health and Safety Code § 33426.5.

d. Defendants failed to determine lost tax revenues.

e. Defendants failed to determine impact on the removal of said 57 Acre Parcel from the County tax roles.

35. By the adoption of Resolution No. 2003-67:

a. Defendant City seeks to and has, indirectly and unlawfully circumvented the express laws of the State of California.

b. Defendant City Council, and Defendant Agency, have authorized the violation of the laws of the State of California, and the conduct of each of them is unlawful and *ultra vires*.

36. By reason of the facts set forth above, Resolution No. 2003-67 is invalid, null and void.

V

FIFTH CAUSE OF ACTION
(Injunctive Relief
Against and/or Including All Defendants)

37. Plaintiff hereby realleges and incorporates by reference paragraphs 1 through 36, and each subdivision thereof, of this First Amended Complaint.

38. The unlawful conduct of Defendants City, City Council and Agency, as described above, constitute unlawful acts.

39. By reason thereof and Defendants' unlawful conduct in adopting Resolution No. 2003-67, Defendants, and each of them, unless and until enjoined and restrained by order of this court, will cause great and irreparable injury to plaintiffs, the public and other taxpayers who are similarly situated in that:

a. Taxes derived from increases in assessed valuation of the property within the project area will, pursuant to Health and Safety Code Section 33670, will be removed from the tax roles and will not be paid to defendant Agency or to the other taxing entities which provide services throughout the County of San Bernardino, or be available to pay bonds or assessments.

b. Plaintiff is informed and believes that funding for certain specific assessments will be on longer charged against said Fifty-Seven acres thereby increasing the tax burden for Hesperia residents.

c. The City of Hesperia will lose its sovereign authority over, and its right to govern said Fifty Seven Acres thereby depriving the citizens of the City of Hesperia of their ability and their right to elect the individuals responsible for governing said Fifty Seven Acre Parcel.

40. Plaintiff has no adequate remedy at law.

VI

SIXTH CAUSE OF ACTION (Declaratory Relief Against and/or Including All Defendants)

41. Plaintiff hereby realleges and incorporates by reference paragraphs 1 through 40, and each subdivision thereof, of this First Amended Complaint.

42. An actual controversy has arisen and now exists between Plaintiffs and Defendants in that Plaintiff contends the adoption of Resolution No. 2003-67 is unlawful in that:

a. The purpose of Defendants' Resolution No 2003-67 and said Agreement is not to correct conditions within the Project Area, but rather:

- i. Violate the laws of the State of California.
- ii. Violate the provisions of the Community Redevelopment Law.
- iii. Encourage and promote blight.

- iv. Are not legitimate uses of the powers granted by the California Community Redevelopment Law.
- v. Are not a public use within the meaning of Article I, Section 19 of the California Constitution.
- vi. Are not a lawful use of tax increment under Article XVI, Section 16 of the California Constitution.

b. Defendant City seeks to and has, indirectly and unlawfully circumvented the express laws of the State of California which prohibit gambling.

c. Defendant Agency, has authorized the violation of the laws of the State of California, has acted outside the purposes of the California Redevelopment Law, and its conduct is unlawful and *ultra vires*.

d. The City of Hesperia will lose its sovereign authority over, and its right to govern said Fifty Seven Acre Parcel thereby depriving the citizens of the City of Hesperia of their ability and their right to elect the individuals responsible for governing said Fifty Seven Acre Parcel.

43. Plaintiff is informed and believes and based thereon allege that Defendants deny Plaintiff's contentions and contend that their actions were in compliance with the provisions of all procedural and substantive laws.

44. Plaintiff has no adequate remedy at law.

45. By reason of the above, a judgment is necessary declaring Resolution No 2003-67 invalid, null and void.

VII
SEVENTH CAUSE OF ACTION
(Petition Writ of Mandate
Against and/or Including
All Specifically Named Respondents)

46. Petitioner hereby realleges and incorporates by reference paragraphs 1 through 36 and each subdivision thereof, of this First Amended Complaint.

47. By the adoption of Resolution No. 2003-67, Respondents City, Agency, and City Council assisted in the development and construction of property that will be used for gambling or gaming in the Project Area in violation of Health and Safety Code § 33426.5.

48. Respondents' Resolution No. 2003-67 was not adopted for lawful purposes for redevelopment within the meaning of Health and Safety Code §§ 33020, 33021, 33030, 33031, 33050, 33070 and 33071 or any, or each of them.

49. The Fifty Seven Acre Parcel in the Project Area, in fact, does not exhibit deteriorating structures wherein the inhabitants of the area are subjected to physical dangers or health hazards, nor does it suffer from economic dislocation, deterioration, or disuse which cannot be remedied by private or governmental action without redevelopment.

50. By the adoption of Resolution No. 2003-67:

a. Respondent City seeks to and has, indirectly and unlawfully circumvented the express laws of the State of California.

b. Respondent City Council, and Defendant Agency, have authorized the violation of the laws of the State of California, and the conduct of each of them is unlawful and *ultra vires*.

51. Plaintiffs have no plain, speedy and adequate remedy in the ordinary course of law other than the relief sought in this cause of action.

52. By reason of the facts set forth above, Resolution No. 2003-67 is beyond the powers of Respondents City or Agency to adopt and is invalid, null, void, and of no force or effect.

WHEREFORE, plaintiff respectfully prays:

1. For an Order of this Court prescribing notice and directing the publication of summons against all persons in the manner provided by Section 861 of the Code of Civil Procedure.

2. That all persons interested in Resolution No 2003-67 be required to appear herein and set forth any reasons they may have, and any defects which they or any of them claim render the proceedings or Resolution 2003-67 valid or invalid.

3. For a judgment of this Court declaring that the Resolution No. 2003-67 is invalid, void and of no effect.

4. For a judgment of this Court declaring that Defendants Community Redevelopment Agency of the City of Hesperia, the City Council of the City of Hesperia, and the City of Hesperia shall not implement Resolution No. 2003-67 or any of the provisions of the Municipal Services Agreement.

5. For an order preliminarily and permanently enjoining Defendants Redevelopment Agency of the City of Hesperia, the City of Hesperia, and City Council of the City of Hesperia, their agents, employees or any persons acting in concert with them from taking any action to implement or carry out Resolution No. 2003-67 or any of the provisions of the Municipal Services Agreement.

6. That the Court issue a peremptory writ of mandate in the first instance commanding Respondents to revoke and rescind Resolution No. 2003-68, and that Redevelopment Agency of the City of Hesperia, the City of Hesperia, and City Council of the City of Hesperia desist and refrain from taking any action to implement or carry out Resolution No. 2003-67 or any of the provisions of the Municipal Services Agreement.

7. That the Court, alternatively, first issue an alternative writ commanding Defendants to rescind and revoke Resolution No. 2003-68 or, in the alternative show cause why it should not do so and thereafter issue a peremptory writ commanding Respondents to rescind and revoke Resolution No. 2003-67, and that Respondents Redevelopment Agency of

the City of Hesperia, the City of Hesperia, and City Council of the City of Hesperia desist and refrain from taking any action to implement or carry out Resolution No. 2003-67 or any of the provisions of the Municipal Services Agreement.

8. For costs of suit.
9. Reasonable attorneys' fees and litigation expenses incurred herein.
10. For such other and further relief as this Court deems just and proper.

LAW OFFICES OF
C. ROBERT FERGUSON

By _____
C. Robert Ferguson, Attorney for
Plaintiff Hesperia Citizens for Responsible
Development