

JAN -8 2007 - TRACY
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Superior Court of California, County of San Joaquin
Unlimited Jurisdiction

TRACY REGION ALLIANCE FOR A QUALITY
COMMUNITY (TRAQC) a California
unincorporated, non-profit public benefit
association,

Petitioner,

Vs.

CITY OF TRACY, CITY COUNCIL OF CITY OF
TRACY,

Respondents

Filed APR 11 2007
ROSA JUNQUEIRO, CLERK
By CHARLENE GRAY
DEPUTY

Case No. CV029502

~~REVISED PROPOSED~~
STATEMENT OF DECISION

EH/cy

1 The above-entitled matter came on for hearing August 31, 2006 in Department 41
2 before the Honorable Elizabeth Humphreys, presiding. Mark V. Connolly, Esq. and
3 attorney Andrea Ruiz-Esquide of the Law Offices of Shute, Mihaly & Weinberger, appeared
4 on behalf of Petitioner, Tracy Regional Alliance for a Quality Community ("Petitioner" or
5 "TRAQC") and Rick W. Jarvis, Esq., of the Law Offices of Jarvis, Fay & Doporto,
6 appeared on behalf of Respondents City of Tracy and City Council of City of Tracy
7 (collectively, "Respondents").

8 Having heard and considered the moving, opposition and reply papers and the
9 arguments presented, the court issued a Tentative Decision on November 29, 2006,
10 indicating its intent to grant Petitioner's Motion for Judgment on the Writ and to deny
11 Respondents' Motion for Judgment on the Writ. The court invited any party who wanted a
12 Statement of Decision to request one within ten (10) days of the court's Tentative Decision,
13 pursuant to Code of Civil Procedure Section 632.

14 On December 7, 2006, Respondents filed their Request for a Statement of Decision,
15 listing five "controverted issues." On December 21, 2006, Petitioner filed Objections to
16 Respondents' Request for Statement of Decision, arguing that Requests Nos. 2, 4, and 5
17 (second question) were improper. On January 2, 2007, Respondents filed Objections to
18 Proposed Judgment and Proposed Statement of Decision. On January 8, 2007, Petitioner
19 filed Response to Respondents' Objections to Proposed Judgment and Proposed Statement
20 of Decision. Having reviewed all the papers submitted by the parties, the court now issues
21 the following Statement of Decision.

22 I. DECISION

23 Petitioner's Motion for Judgment on the Writ is granted. Respondents' Motion for
24 Judgment on the Writ is denied.

25 II. FINDINGS

26 1. The voters of the City of Tracy approved an initiative ordinance commonly
27 known as Measure A on November 7, 2000. By passing Measure A (Growth Management
28 Ordinance) ("GMO") the voters amended and readopted Tracy Municipal Code sections

1 10.12.140 and 10.12.200. In particular, pursuant to Measure A, the voters readopted the
2 following language in section 10.12.140 of the Tracy Municipal Code: “[T]he City shall not
3 allocate more than 225 RGAs [Residential Growth Allotments] in any calendar year to
4 development projects with which the city has entered into a development agreement
5 providing for an allocation of RGAs (as identified in the GMO Guidelines.) The annual
6 limit of 225 RGAs for development agreement shall include the sum of all RGAs allocated
7 to all development agreements in any calendar year. The City shall not allocate more than
8 750 RGAs in any calendar year.” Administrative Record (“AR”) 3:392. [See Respondents’
9 Request for Statement of Decision (“Request”), No. 2].

10 2. The Tracy Hills & Ellis Development Agreements being negotiated by the
11 City of Tracy in 2006 together exceeded the limits of Section 10.12.140. AR 1:10.

12 3. On May 2, 2006, the City of Tracy City Council adopted an Ordinance
13 amending the Growth Management Ordinance and replacing the 225 annual limitation of
14 allocation of RGAs by Development Agreement to “allocate any number of RGAs to
15 development agreement projects so long as the overall number of allocations are consistent
16 with the maximum and average limits established in the GMO”. See Ordinance 1095;
17 AR 1:2-3.

18 4. Measure A limited the number of RGAs that could be awarded by
19 Development Agreement(s) to 225 per year. Ordinance 1095 is inconsistent with
20 Measure A.

21 5. The power of initiative must be broadly construed and an initiative must be
22 given the effect the voters intended it to have. Cal. Const. art II, § 11; Associated Home
23 Builders v. City of Livermore, 18 Cal. 3d 582, 591 (1976); DeVita v. County of Napa, 9
24 Cal. 4th 763, 776 (1995); Yoshisato v. Superior Court, 2 Cal. 4th 978, 988 (1992). The
25 standard of review used by this court to review Ordinance 1095 is the abuse of discretion
26 standard. United Association v. City and County of San Francisco, 32 Cal. App. 4th 751,
27 759 (1995). Amwest Surety Insurance Company v. Wilson 11 Cal. 4th 1243, 1256 (1995),
28 relied upon by Respondents, is in accord. As the Supreme Court explained in Amwest, the

1 court determines whether, by “any reasonable construction,” the legislation gives effect to
2 the voters’ intent. Id. at 1255-56. Notably, Amwest explicitly rejected Amwest’s proposed
3 standard of deference to legislative enactments, explaining that the Legislature could amend
4 an initiative only “to further [its] purposes” in accordance with “the effect the voters
5 intended it to have.” Id. at 1251, 1255-56. Accordingly, pursuant to the Supreme Court’s
6 holding in Amwest, the City of Tracy’s interpretation of Measure A is *not* entitled to
7 deference because it is clearly contradictory to Measure A’s purposes and does not give
8 Measure A “the effect the voters intended it to have.” [See Request, No. 1].

9 6. The text of Measure A amended and adopted the entirety of Section
10 10.12.140, including the 225 limit on RGAs by Development Agreement. See generally,
11 City of Sacramento v. Public Employees' Retirement System, 22 Cal. App. 4th 786, 794-95
12 (1994); Agnew v. State Board of Equalization, 21 Cal. 4th 310, 330 (1999). [See Request,
13 No. 2]

14 7. The stated purpose of Measure A was “to reduce the rate of residential growth
15 from a maximum of 1,500 per year to 750. It is also to prevent the City Council from
16 increasing the rate of residential growth for special residential projects without voter
17 approval.” AR 3:391. A voter reading Measure A would have understood, following its
18 passage, that if 750 RGA’s were issued in a particular year, no more than 225 could be
19 allocated to special projects by Development Agreement. AR 3:391.

20 8. While not the basis of this court’s decision, the court finds that the official
21 ballot materials for Measure A confirm that the City of Tracy voters intended to adopt the
22 Development Agreement limit. AR 3:400A-400B (ballot arguments for and against
23 Measure A); AR 3:399 (city attorney’s impartial analysis of Measure A); AR 3:397-398
24 (city attorney’s title and summary of Measure A). [See Request, No. 4]

25 9. Ordinance 1095, repealing the Development Agreement limit, was an
26 amendment of Measure A. See Proposition 103 Enforcement Project v. Quackenbush, 64
27 Cal. App. 4th 1473, 1485 (1998). Measure A, Section 4(5) permitted the City Council to
28 adopt subsequent amendments to the GMO, but only “so long as such amendments are

1 consistent with the terms and purposes of this Initiative Ordinance.” AR 3:393. Because
2 Ordinance 1095 repealed the limit on RGAs by Development Agreement that the voters had
3 explicitly adopted in approving the initiative, Ordinance 1095 was “obviously” inconsistent
4 with the terms and purposes of Measure A and thus was not authorized by Section 4(5) of
5 the Measure. See Proposition 103, 64 Cal.App.4th at 1494. Contrary to Respondents’
6 suggestion, then, it is *not* reasonable, or reasonably possible, to conclude that the Tracy
7 voters intended to authorize the City Council to subsequently amend Measure A’s limit on
8 Development Agreements without first submitting such an amendment to a vote of the
9 people. Instead, the voters in adopting Measure A clearly intended to *prevent* any
10 amendments to the GMO’s limit on Development Agreements that are not “consistent with
11 the terms and purposes of [the] Initiative Ordinance.” AR 3:00393 (Measure A, section
12 4(5)). [See Request, Nos. 3; 5]

13 10. As a matter of law, Measure A may only be amended by the voters. Cal.
14 Elections Code § 9217; See DeVita, 9 Cal. 4th at 788; AR 3:394. See generally, Flavell v.
15 City of Albany, 19 Cal. App. 4th 1846, 1850 (1993); C-Y Development Co. v. City of
16 Redlands, 137 Cal. App. 3d 926, 932 (1982). Because Respondents abused their discretion
17 under Code of Civil Procedure section 1085 by enacting legislation plainly contrary to
18 Measure A, this court grants Petitioner’s Motion for Judgment on the Writ and denies
19 Respondents’ Motion for Judgment on the Writ. [See Request, Nos. 3, 5]

20 11. The City of Tracy will, therefore, be mandated to vacate and set aside
21 Ordinance 1095.

22 III. RULING ON PETITIONER’S OBJECTIONS TO REQUEST FOR 23 STATEMENT OF DECISION

24 1. Petitioner’s Objection to Request No. 2 is SUSTAINED. Notwithstanding
25 this ruling, the court has addressed this Request in paragraphs 1 and 6 of its Findings, above.

26 2. Petitioner’s Objection to Request No. 4 is SUSTAINED. Notwithstanding
27 this ruling, the court has addressed this Request in paragraph 8 of its Findings, above.
28

1 3. Petitioner's Objection to the second question of Request No. 5 is
2 SUSTAINED. The court declines to address this question, which concerns an issue that was
3 not raised at trial and thus is not a "principal controverted issue" under Code of Civil
4 Procedure section 632.

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6 Dated APR 11 2007

ELIZABETH HUMPHREYS
Hon. Elizabeth Humphreys
Judge of the Superior Court

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1 TRACY REGION ALLIANCE FOR A QUALITY COMMUNITY VS. CITY OF TRACY
2 CASE # CV029502

3 PROOF OF SERVICE

4 I, the undersigned, declare that I am, and was at the time of service of the papers herein
5 referred to, over the age of 18 years and not a party to the within action or proceeding. My business
6 address is 121 East 11th. Street, Tracy, California, which is located in San Joaquin County. I am
7 familiar with the practice at my place of business for collection and processing of correspondence
for mailing with the United States Postal service. Such correspondence will be deposited with the
United States Postal service on the same day in the ordinary course of business.

8 On January 8, 2007, I served the following document(s):

9 (REVISED PROPOSED) STATEMENT OF DECISION

10 By placing X a true copy the original in a separate envelope for each addressee named below,
11 with the name and address of the person served shown on the envelope as follows:

12 Debra Corbett, City Attorney
13 325 East 10th Street
14 Tracy, CA 95376

Rachel Hooper
Amy Bicker
Andrea Ruiz-Esquide
Shute, Mihaly & Weinberger, LLP
396 Hayes Street
San Francisco, CA 94102

15 Rick W. Jarvis
16 Jarvis Fay & Doportto
17 475 14th Street, #260
18 Oakland, CA 94612

19 and by sealing the envelope and placing it for collection and mailing with the postage fully prepaid
20 in accordance with the ordinary business practices.

21 Executed on January 8, 2007, at Tracy, California.

22 I declare under penalty of perjury, under the laws of the State of California and the United States of
23 America that the foregoing is true and correct.

24 
25 MARIE HUERTA
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