Filed 4/23/10 The Community Redevelopment Agency of the City of Los Angeles v. Kramer Metals CA2/4

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF LOS ANGELES, CALIFORNIA, Plaintiff and Respondent, v. KRAMER METALS, et al., Defendants and Appellants.	B208726 (Los Angeles County Super. Ct. No. BC318563)

APPEAL from a judgment of the Superior Court of Los Angeles County, Warren L. Ettinger, Judge, and Bruce Mitchell, Commissioner. Affirmed.

Stradling Yocca Carlson & Rauth, Jennifer Yu and Allison E. Burns for Defendants and Appellants.

Carmen A. Trutanich, City Attorney, Claudia McGee Henry, Assistant City Attorney, and Gerald M. Sato, Deputy City Attorney, for Plaintiff and Respondent.

Kramer Metals, a California partnership, Stanley J. Kramer, as its general partner, and Stanley J. Kramer and Susan M. Kramer, husband and wife, as joint tenants, (collectively, Kramer) appeal from the judgment in condemnation following: (1) a court trial determining Kramer's entitlement to just compensation from the Community Redevelopment Agency of the City of Los Angeles, California (CRA) for taking Kramer's property (Kramer Property or 1000 Property); (2) a jury trial resulting in an award of $4,830,000 as just compensation; and (3) a jury trial resulting in a verdict that Kramer "suffered no loss of goodwill as a result of the taking."

On appeal, Kramer contends that: (1) the trial court erred in failing to dismiss the condemnation action, because the Resolution of Necessity (RON) did not contain a determination that the public interest and necessity required the project, a jurisdictional defect; (2) the requisite owner participation process was a sham; (3) CRA violated the Ralph M. Brown Act (Gov. Code, § 54950, et seq.; Brown Act) in adopting the amended RON; (4) CRA's pre-determination to acquire the Kramer Property violated Kramer's due process right to notice and opportunity to be heard; (5) the amended RON lacked a renewed parcel-specific blight finding; (6) the court abused its discretion in excluding evidence of precondemnation damages and in admitting the testimony of CRA's goodwill expert; and (7) the judgment must be amended to include an award of interest on the probable compensation deposited.[1] We affirm the judgment.

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[1] By letter, we invited the parties to address whether Kramer was entitled to interest on the amount of probable compensation not already withdrawn by Kramer; whether Kramer forfeited the interest by acquiescing in CRA's representation that Kramer's nonpayment of rent during the holdover period was equivalent to this interest; and whether the matter should be remanded for a hearing for a determination on Kramer's entitlement to interest. We have received their responses.

BACKGROUND

In 1995, the Los Angeles City Council passed Ordinance No. 17080, which approved and adopted the Council District Nine Corridors South of the Santa Monica Freeway Recovery Redevelopment Project Area Development Plan (Redevelopment Plan). The plan's goals include alleviation of blight and stimulation of economic activities in the project area. CRA is the public agency responsible for implementing this plan. In so doing, CRA undertook a project known as the Slauson Central Retail Shopping Center (Shopping Center), which would be privately developed and consist of approximately 80,000 square feet of retail improvements, anchored by a supermarket and drug store. The proposed Shopping Center site consisted of several parcels, including the Kramer Property at 944-1010 East Slauson Avenue in Los Angeles, which CRA sought to acquire in this action. A railroad right of way separates the Kramer Property from the property owned by M&A Gabaee (Gabaee Property).

In June 1999, Kramer and Concerned Citizens of South Central Los Angeles (Concerned Citizens) each returned a Statement of Interest to CRA. In response to CRA's Request for Proposals (RFP), Concerned Citizens submitted a proposal that met all the RFP criteria. CRA obtained authorization to pursue an Exclusive Negotiating Agreement (ENA) with Concerned Citizens. Kramer's proposal did not meet the RFP criteria.

In December 2003, CRA entered into a Disposition and Development Agreement (DDA) with Slauson Central, LLC, a Delaware limited liability corporation (Slauson Central), as the project developer. The principals of Slauson Central were Concerned Citizens, a California nonprofit public benefit corporation, and Regency Realty Group, Inc. a Florida corporation.

On March 4, 2004, CRA's board of commissioners (Board) adopted RON No. 6196 authorizing CRA to acquire through eminent domain the Gabaee Property at 1040 East Slauson Avenue, which is in the Redevelopment Plan project area. On the same date, CRA commenced its condemnation against M&A Gabaee, among others (Gabaee action). The trial court issued a Statement of Decision upholding CRA's right to take the Gabaee Property. Following further proceedings, a final judgment in condemnation was entered, which was affirmed on appeal in an unpublished decision (B202796).[2]

On July 15, 2004, Board adopted RON No. 6216, authorizing CRA to initiate eminent domain proceedings against Kramer to obtain the Kramer Property. The complaint was filed on the same date. Following the trial court's April 11, 2005 order conditionally dismissing the action, Board adopted on May 5, 2005, an amended RON to correct a drafting error in the RON. Thereafter, on May 11, 2005, the court deemed filed the same day the first amended complaint to which the amended RON was attached.

In the body of our opinion, below, we discuss the various trial court rulings challenged by Kramer on appeal. For present purposes, it is enough to note that the court held a non-jury trial on Kramer's right to just compensation, issuing a statement of decision in November 2005. Thereafter, in a jury trial on the valuation of Kramer's real property interests, the jury returned a verdict on December 18, 2006, awarding Kramer $4,830,000 as the fair market value of the property taken on September 8, 2004. Following the trial court's ruling on January

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[2] We take judicial notice of these facts gleaned from the B202796 decision, which informs on the nature and disposition of the Gabaee action and thereby assists in understanding the procedural aspects of this action. (Evid. Code, §§ 452, 459.) Kramer's unopposed request for judicial notice dated September 25, 2009 of the complaint filed in B202796 is granted.

11, 2006, that Kramer was not entitled to precondemnation damages, a jury trial was held on Kramer's goodwill value. The jury returned a verdict on September 6, 2007, determining "Kramer Metals has suffered a loss of business goodwill in the amount of $0." On May 13, 2008, the judgment in condemnation was entered.[3]

DISCUSSION

1. *Conditional Dismissal was Appropriate*

Kramer contends the trial court erred in not granting an unconditional dismissal of the initial complaint, because the RON did not contain a determination that the public interest and necessity required the project, a jurisdictional defect. The conditional dismissal order was well within the trial court's wide discretion.

a. *Applicable Legal Principles*[4]

"In order to properly file an eminent domain action, a public agency must first have adopted, upon noticed hearing, a Resolution of Necessity [RON] which supports the initiation of the action. (§§ 1240.040, 1245.220.)" (*San Bernardino County Flood Control Dist. v. Grabowski* (1988) 205 Cal.App.3d 885, 893.) "No public entity may condemn property unless it has first adopted a [RON] that meets all statutory requirements. [Citation.]" (*City of Stockton v. Marina Towers LLC* (2009) 171 Cal.App.4th 93, 104 [failure to describe project]; see also, *Santa Cruz County Redevelopment Agency v. Izant* (1995) 37 Cal.App.4th 141, 148; *City of*

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[3] We note that on April 27, 2006, this court denied Kramer's petition for writ of mandate on the grounds the petition was untimely and Kramer failed to demonstrate entitlement to extraordinary relief. We grant Kramer's request to take judicial notice of the writ proceedings in B188825. In the petition, Kramer raised many of the same contentions as it does in this appeal.

[4] All undesignated section references are to the Code of Civil Procedure.

Saratoga v. Hinz (2004) 115 Cal.App.4th 1202, 1220.) Strict compliance with these statutory provisions is mandatory. (*San Bernardino County Flood Control Dist. v. Grabowski*, *supra*, 205 Cal.App.3d at p. 893.)

"The power of eminent domain may be exercised to acquire property for a proposed project only if all of the following are established: [¶] (a) *The public interest and necessity require the project*. [¶] (b) The project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury. [¶] (c) The property sought to be acquired is necessary for the project." (§ 1240.030, italics added.) The RON shall contain "[a] declaration that the governing body of the public entity has found and determined each of" these three elements. (§ 1245.230, subd. (c)(1)-(3).)

"Implicit in [the] requirement of a hearing and the adoption of a [RON] is the concept that, in arriving at its decision to take, the [a]gency engage in a good faith and judicious consideration of the pros and cons of the issue and that the decision to take be buttressed by substantial evidence of the existence of the three basic requirements set forth in . . . section 1240.030." (*Redevelopment Agency v. Norm's Slauson* (1985) 173 Cal.App.3d 1121, 1125-1126 (*Norm's Slauson*).) "The court's review of the validity of a [RON] . . . is limited to a review of the agency's proceedings. [Citation.]" (*City of Lincoln v. Barringer* (2002) 102 Cal.App.4th 1211, 1222; see § 1245.255 [judicial review of RON validity].)

"Except as otherwise provided by statute, a [RON] adopted by the governing body of the public entity pursuant to this article conclusively establishes the matters referred to in Section 1240.030." (§ 1245.250, subd. (a).) "A [RON] does not have the effect prescribed in Section 1245.250 to the extent that its adoption or contents were influenced or affected by *gross* abuse of discretion by the governing body." (§ 1245.255, subd. (b), italics added.) "A gross abuse of discretion occurs where the public agency acts arbitrarily or capriciously, renders findings that are

lacking in evidentiary support, or fails to follow the required procedures and give the required notices before condemning the property. [Citation.] Although the trial court normally determines whether the agency has abused its discretion, the appellate court may resolve the issue where the case turns on undisputed facts and involves a pure question of law. [Citations.]" (*City of Stockton v. Marina Towers LLC, supra,* 171 Cal.App.4th at p. 114 [rev. den.]; see also *Huntington Park Redevelopment Agency v. Duncan* (1983) 142 Cal.App.3d 17, 24 [gross abuse deferential review standard].)

b. *Relevant Proceedings*

Kramer sought dismissal of this eminent domain action, because RON No. 6216 failed to contain a determination that "the public interest and necessity require the proposed project." (§ 1245.230, subd. (c)(1).) The trial court issued an order of conditional dismissal.[5] The court ordered this action "dismissed if within 60 days from today [CRA] has not adopted an amended/corrected [RON], and then filed an amended or supplemental complaint which attaches the amended [RON]."

On May 5, 2005, Board adopted the amended RON. As originally worded, the RON determined "[t]he public interest and necessity require *the acquisition of the Properties for* the Project." (Italics added.) The amended RON struck by interlineation the language "the acquisition of the Property for" and added "proposed." As reworded, the declaration read: "The public interest and necessity require the proposed Project," which comports with the statutory mandate.

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[5] In determining the omitted declaration was a clerical error, the court found CRA had made a prima facie showing in its case in chief that its board had addressed the project necessity issue; the board memo "attached to and incorporated into" the RON "correctly states the finding to be made"; and the RON hearing transcript "shows that the issue of project necessity was discussed."

c. *Conditional Dismissal Order Not Abuse*

Kramer does not challenge the sufficiency of the evidence to establish the element that public interest and necessity require the project, nor does Kramer contend Board failed to discuss or take into account this element in adopting RON No. 6216. Rather, its position is that the absence of a determination that this element exists is a jurisdictional defect mandating *unconditional* dismissal of this action. We disagree.

Upon finding that the agency does not have the right to acquire property by eminent domain, the trial court must order either: "[i]mmediate dismissal of the proceeding as to that property" (§ 1260.120, subd. (c)(1)), or "[c]onditional dismissal of the proceeding as to that property unless such corrective and remedial action as the court may prescribe has been taken within the period prescribed by the court in the order" (§ 1260.120, subd. (c)(2)).

As stated in the relevant Law Revision Commission Comment to section 1260.120: "A determination that the plaintiff has no right to condemn the defendant's property ordinarily requires an order of dismissal [under] Paragraph (1) of subdivision (c). . . . [¶] Paragraph (2) of subdivision (c) is designed to ameliorate the all-or-nothing effect of paragraph (1). The court is authorized in its discretion to dispose of an objection in a just and equitable manner. *This authority does not permit the court to create a right to acquire where none exists, but it does authorize the court to grant leave to the plaintiff to amend pleadings or take other corrective action that is just in light of all of the circumstances of the case*. . . . For example, if the resolution of necessity was not properly adopted, the court may, where appropriate, order that such a resolution be properly adopted within such time as is specified by the court and that, if a proper resolution has not been adopted within the time specified, the proceeding is dismissed." (Italics added.)

The record refutes Kramer's claim that the conditional dismissal order is infirm, because the trial court is not authorized "to create a right to acquire where none exists," under section 1260.120, subdivision (c)(2). The trial court did not find that in adopting the RON, Board failed to determine the public interest and necessity required the project or that such determination was not supported by substantial evidence. Rather, the court found that the RON declaration regarding this element was simply misstated, a clerical error.[6] To require unconditional dismissal under these circumstances would impermissibly exalt form over substance. The trial court acted within its discretion under section 1260.120, subdivision (c)(2) in issuing the challenged conditional dismissal order, which resulted in Board adopting an amended RON with the properly worded declaration and curing the RON's statutory noncompliance. The matter then properly proceeded on an amended complaint based on the amended RON. (See *City of Stockton v. Marina Towers LLC, supra,* 171 Cal.App.4th at p. 113 [conditional dismissal to rectify RON containing a "hopelessly obscure" description of project not abuse]; *City of Lincoln v. Barringer, supra,* 102 Cal.App.4th at pp. 1233-1234 [conditional dismissal appropriate to cure non-fatal defect].)

2. *No Sham Owner Participation Process Shown*

Kramer contends that dismissal of this action is mandated, because CRA's pre-selection of Concerned Citizens as the project developer established CRA

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[6] RON No. 6216, as adopted on July 15, 2004, incorporated by reference the "Board Memorandum" of the same date approved by Board, which contains this recital: "The proposed RON sets forth [these] findings to be made by . . . Board: 1) whether the public interest and necessity require[] the Project." It also delineates in detail the particulars concerning why and how the project was not just "a necessary component" but "a critical component" of the Redevelopment Plan.

conducted a sham owner participation process in violation of its "Owner Participation Rules" (Rules). We disagree.

An agency "shall permit owner participation in the redevelopment of property in the project area in conformity with the redevelopment plan." (Health & Saf. Code, § 33380.) The agency "shall extend reasonable preference to persons who are engaged in business in the project area . . . if they otherwise meet the requirements prescribed by the development plan" and "[w]ith respect to each redevelopment project, each agency shall . . . adopt . . . rules to implement the operation of this section in connection with the plan." (Health & Saf. Code, § 33339.5.)

Section 601 of the Rules provide that "[b]efore entering into any Participation Agreements, Disposition and Development Agreements, Exclusive Negotiation Agreements, or taking other actions which may involve the acquisition of real property in the Project Area, [CRA] shall": (1) notify owners of property that may be acquired of their opportunity to participate in redevelopment; (2) provide a Statement of Interest to such owners forty-five (45) days before initiating any action requiring acquisition of property; (3) send requests for proposals (RFP) to all owners who submitted a statement of interest; and (4) "consider all proposals submitted by [o]wners within the time prescribed." Section 100 of the Rules provides that the purpose of these Rules is to provide owner participation "to the maximum extent feasible."

Initially, we point out that any noncompliance with CRA's Rules does not affect the validity of the adopted RON or, in this instance, the amended RON. (*Inglewood Redevelopment Agency v. Aklilu* (2007) 153 Cal.App.4th 1095, 1114-1115 [although concepts of owner participation rules and adoption of a RON are related concepts, "compliance with [such] rules . . . is not a prerequisite to adoption of a [RON]".)

In any event, the trial court properly found that CRA complied with the applicable Rules. Specifically, the court found in its November 2005 statement of decision following the trial on Kramer's right to just compensation that Kramer had adequate time to submit a formal proposal and that Kramer's "failure to have an adequate proposal ready in January, 2000" instead was "due to strategic decisions . . . Kramer made." The court further found Kramer failed to show CRA had pre-determined the selection of the project developer. The court explained that although "Concerned Citizens was identified as the proposed [or 'intended'] developer in the BEDI application [for federal funding]," "[i]t will never be known whether Concerned Citizens would have been unfairly preferred against another applicant with equal merit, because the fact is that only Concerned Citizens submitted a proposal on time that was sufficiently complete to qualify for selection." The court further found the Kramer "six-page" proposal was "inadequate for several reasons. In particular, it did not identify a development team, or state the experience of that team in doing similar projects[;] it lacked a financial plan[;] and there were no architectural drawings or renderings."

Kramer contends the Kramer proposal was "entirely in conformity with the redevelopment plan" but fails specifically to controvert the particulars of the trial court's finding as to the proposal's inadequacy. The absence of any discussion in this regard forfeits Kramer's point. (*Boyle v. CertainTeed Corp*. (2006) 137 Cal.App.4th 645, 649 [challenge to presumption of correctness requires pertinent "argument and legal authority on each point raised," not just "bare assertion of error"]; *Sporn v. Home Depot USA, Inc.* (2005) 126 Cal.App.4th 1294, 1303 [waiver where point unsupported "with reasoned argument and citations to authority"].) Moreover, the record contains substantial evidence to support the finding of inadequacy. In an internal Board memorandum dated April 20, 2000, Jerry Scharlin, the CRA administrator, noted "[t]he RFP requested [Concerned

Citizens and Kramer] submit a detailed development proposal which was to include the identification of the development team and its members, the development team's expertise in developing 'like kind' projects and its financial capability, a financing plan detailing interim and permanent financing sources, a pro-forma construction budget, a sources and uses of funds statement, commitment letters from prospective tenants, conceptual architectural drawings and renderings, a site plan and a preliminary schedule of development and performance." Scharlin further noted: "After an extensive review process, and based upon an evaluation point system format which had been included in the RFP, the evaluation team overwhelmingly selected and recommended [Concern Citizen's] proposal," because its proposal "met all of the criteria set forth in the RFP, [which] was superior in quality and content, and demonstrated [Concerned Citizen's] technical and financial capabilities to undertake the proposed development" while "[t]he proposal submitted by . . . Kramer did not meet the criteria set forth in the RFP."

Kramer's November 1999 six-page response to the RFP identified Kramer and "The Horowitz Group," Ralph Horowitz, owner, as the owners of the property on which the project would be built. Kramer stated "the team of developers that Mr. Horowitz employs will play an intricate role in the development." With respect to financing, Kramer stated "[s]everal . . . banks . . . have agreed in principal [*sic*] to making the permanent loans" and "are awaiting [Kramer's] final plans." Regarding the development team qualifications, Kramer was unable to give a description and the qualifications of the environmental team members, including the qualifications of the primary environmental consultants and the traffic consultants, because they have "[n]ot yet [been] selected." Similarly, Kramer had not yet selected an architect and therefore did not "[s]ubmit descriptions and illustrations of the proposed architect's work on development projects . . . built or are under construction . . . of a similar magnitude to the

proposed development." Kramer listed "[n]one" when asked to "[p]rovide a list of development projects in which [Kramer] and proposed associates have participated, showing the location, type and dollar volume of the work, and projects particularly within urban renewal or redevelopment areas." As to the "business profile for each component organization of the development team," Kramer simply stated Kramer "owned and operated [the] scrap metal company since 1957" and "owns, develops, leases and manages [Kramer's] industrial and commercial properties throughout the City." In short, Kramer's proposal was incomplete and inadequate to meet the development plan criteria.

Kramer also contends the owner participation process is a sham, because "CRA and Concerned Citizens specifically discussed participation rights before [CRA] made a conscious predetermination to award the project to Concerned Citizens." Of course, mere discussion of participation rights does not equate to an irrevocable commitment to CRA as the project developer. (Cf. *Norm's Slauson, supra*, 173 Cal.App.3d at p. 1127 [agency "irrevocably committed itself to take the property in question, regardless of any evidence that might be presented at that hearing" where agency had a contract with the developer and issued revenue bonds to finance project before holding any hearings on public necessity].)

3. *No Public Hearing Violation Shown*

Kramer contends that in adopting the amended RON, CRA violated the Brown Act, because at the May 5, 2005 hearing, Board failed to deliberate publicly and to "agendize" the closed session before adopting the amended RON. No Brown Act violation occurred.

At the May 5, 2005 hearing, Board first took up the proposed amendment of RON No. 6196 (Gabaee property), adopted on March 4, 2004, which contained the identical clerical defect as the Kramer RON No. 6216. Jenny Scanlin, the project

manager, and David Cunningham, CRA's counsel, recommended Board take three actions: (1) correct the clerical error in RON No. 6196, as authorized by the trial court in its April 6, 2005 order; (2) restate the amended and corrected first finding that the public interest and necessity require the proposed project; and (3) reaffirm the three remaining RON No. 6196 findings.

Mr. Cunningham then discussed at length the court's findings and reasoning in authorizing Board to correct the "clerical error or a drafting error" in the first finding that "'The public interest and necessity require the acquisition of the property for the proposed project'" by deleting the words "the acquisition of the property for," which would "cure the problem." Allison Burns, Kramer's attorney, stated although she did not represent "the Gabaee defendants," she objected to "any decision with regard to the Gabaee matter to the extent it predetermines the outcome of the hearing on item No. 3 pertaining to the Kramer Property [amended RON issue]."

The Board Chairman, stated he would entertain the motion that Board amend a clerical error in the first finding of RON No. 6196 to conform to section 1245.230, subdivision (c)(1); to restate the finding as "the public interest and necessity require the proposed project"; confirm that Board intended to adopt the first finding on March 4, 2004 as so restated; and to reaffirm the remaining three findings in RON No. 6196. Board then voted to adopt the proposed amended RON.

Board next proceeded forthwith with the proposed amendment of RON No. 6216 (Kramer property) hearing. Ms. Scanlin and Mr. Cunningham recommended Board take three actions: (1) correct the clerical error in RON No. 6216, as authorized by the trial court in its April 6, 2005 order; (2) restate the amended and corrected first finding that the public interest and necessity require the proposed project; and (3) reaffirm the three remaining RON No. 6216 findings. Mr.

Cunningham advised: "[T]his is not the adoption of the new [RON] but a restatement and reaffirmation of the existing [RON] No. 6216, and it will amend the language that was added that created the problem. Therefore, any testimony, evidence, and discussion should be limited to the matters pertaining to the actions requested in the May 5th, 2005 board memo and the restatement [of] the first finding only . . . , which is that the public interest and necessity require the proposed project."

Kramer's attorney Allison Burns urged Board to return a "'no'" vote, which would allow "Mr. Kramer and Mr. Gabaee [to] develop their own property." Following the participation of Stanley Kramer, Alma Flores, and Jose Aguilar, who also argued for a "no" vote, the Board chairman announced "[t]hat closes the public hearing on item three." CRA's general counsel advised "[a]t this point, . . . [B]oard does have the opportunity for a closed session on these two [remaining] matters if . . . [B]oard wishes."

Board took a recess from the regular public meeting for a special session on items 1 and 2, which the notice described as closed executive sessions with legal counsel to discuss the current status of the Gabaee action (item 1) and the current status of the Kramer action (item 2), during which sessions no action was taken.

Following a brief recess, Board reconvened the regular meeting and voted to adopt the proposed amended RON No. 6216 that corrected the clerical error in the first finding of RON No. 6216; restated the amended finding as "The public interest and necessity require the proposed project"; confirmed it intended to adopt the first finding to read on July 15, 2004 as so amended; and reaffirmed the remaining three findings in RON No. 6216.

The trial court denied the dismissal motion, finding the special hearing had been "properly agendized"; Board deliberated in public on correction of the

clerical error, which did not legally require "[a] lively oral debate[,]" and Board voted publicly. We find no error.

"'The Brown Act was adopted to ensure the public's right to attend the meetings of public agencies. (§ 54950.)' [Citation.] Accordingly, the Brown Act requires that the legislative bodies of local agencies . . . hold their meetings open to the public except as expressly authorized by the Act. [Citations.] The Act authorizes closed [or executive] sessions to be held with regard to certain matters. [Citations.]" (*Kleitman v. Superior Court* (1999) 74 Cal.App.4th 324, 331, fn. omitted; see also, §§ 54950, 54953, 54957, 54962.) One such matter is pending litigation. (§ 54956.9; cf. *Shapiro v. Board of Directors* (2005) 134 Cal.App.4th 170, 185 [no closed session to discuss pending litigation to which agency not party].)

Kramer contends "Board clearly considered and deliberated on the merits of the Kramer Amended RON in closed session in violation of the Brown Act" and "the sole publicly conducted discussion during the entire Kramer Amended RON hearing was whether . . . Board should adjourn to [a] closed session." Kramer further contends "Board's deliberations during the closed session regarding the adoption of the Kramer Amended RON did not fall within the scope of a briefing on the 'status' of the lawsuit as specified on the CRA's agenda." (See Gov. Code, § 54954.2 ["No action or discussion shall be undertaken on any item not appearing on the posted agenda [in closed session]".)

We reject, as unsupported, Kramer's claims of Brown Act violations, which are founded in sheer speculation. (*People v. Cluff* (2001) 87 Cal.App.4th 991, 1002 [speculation not evidence, much less substantial evidence]; see also, *People v. Morris* (1988) 46 Cal.3d 1, 19 [nor may a reasonable inference "'be based on suspicion alone, or on imagination, speculation ["as to probabilities"], supposition, surmise, conjecture, or guess work'"].) The record reveals Board conducted the

requisite public hearing at which Kramer was afforded the opportunity to comment both before and during Board's consideration of the proposed amended RON, and that Board's deliberations and vote were conducted during the open hearing. The brief, executive session, at which no action was taken, was simply to allow Board members to consult with counsel regarding the Gabaee action and this action, which is expressly authorized by the Brown Act. (Gov. Code, § 54956.9.)

4. *Notice and Opportunity to be Heard at RON/Amended RON Hearing*

Kramer contends CRA violated Kramer's due process right to "notice and a reasonable opportunity to appear and be heard." No due process or statutory violation (§ 1245.235) transpired.

Kramer asserts the RON is "void *ab initio* because . . . CRA predetermined to acquire the Kramer Property," which is demonstrated by its predetermination "to award the project and the Kramer Property to Concerned Citizens in 1998" and its approval of "the [RON] to acquire the Gabaee property on March 4, 2004, which acquisition is unnecessary unless . . . CRA also passed the [RON] to acquire the Kramer Property," which "constitutes the remaining three parcels 'needed to develop the Property' and constitutes sixty percent (60%) or 3.22 acres of the project Site." Kramer argues "when . . . CRA determined to acquire the Gabaee property in March 2004, it [thus] necessarily pre-determined to acquire the Kramer Property" and "at the July 15, 2004 RON hearing, . . . CRA 'simply "rubber stamp[ed]" a pre-determined result' – an outcome expressly forbidden under *Norm's Slauson* [*supra*, 173 Cal.App.3d 1121]."

The record does not support Kramer's claim that CRA had predetermined to award both the project and the Kramer Property to Concerned Citizens in 1998. At this point in time, CRA made no commitments to Concerned Citizens. Rather, in 1998, CRA simply identified Concerned Citizens as the *proposed or nominated*

developer of the Shopping Center in its application for federal funds in the BEDI[7] grant application. The Disposition and Development Agreement selecting Concerned Citizens as the developer was not entered into until December 2003.

In *Norm's Slauson*, the redevelopment agency entered into a contract with a developer and issued revenue bonds to finance the project prior to holding any public necessity hearing. The agency therefore had "irrevocably committed itself to take the property in question, regardless of any evidence that might be presented at that hearing." (*Norm's Slauson, supra*, 173 Cal.App.3d at p. 1127.)

In rejecting Kramer's claim, the trial court correctly explained *Norm's Slauson* is factually distinguishable, because here "[t]here was no binding contract with the developer or issuance of revenue bonds." As the court pointed out "[t]he key term is 'irrevocable[,]'" and "CRA could have rescinded its Gabaee [RON] had it heard something at the hearing on the Kramer [RON] which persuaded [CRA] that the project should not go forward."

Kramer also asserts "at the 2005 CRA hearing on the Amended RON, . . . CRA once again predetermined the outcome in violation of *Norm's Slauson*[,]" because CRA "failed to discuss or deliberate adoption of the Amended RON in any manner" and failed "to consider the evidence presented at the 2005 hearing, as evidenced by the text of the Amended RON." Kramer misapprehends the nature and purpose of the 2005 hearing, which was not to adopt a new RON but rather simply to correct a clerical drafting error in the existing RON, under which circumstances, as the trial court noted, oral debate was not legally required.

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[7] BEDI is the acronym for "Brownfields Economic Development Initiative."

5. *No New Offer of Compensation Required*

Kramer contends the first amended complaint fails to state a cause of action for condemnation, because no updated offer of just compensation prior to adoption of the amended RON on May 5, 2005, is alleged. We disagree. No new offer was required.

"Prior to adopting a [RON] . . . the public entity shall establish an amount which it believes to be just compensation therefor, and shall make an offer to the owner or owners of record to acquire the property for the full amount so established." (Gov. Code, § 7267.2, subd. (a)(1) [§ 7267.2(a)(1)].)

On April 30, 2004, CRA made an offer of just compensation to Kramer. It is undisputed that CRA did not make any new offer prior to adoption of the amended RON, whose recital that "[t]he offer required by Section 7267.2 . . . has been made to the owner of record of the Propert[y]" refers to the 2004 offer.

Kramer argues a new offer is warranted, because this 2004 offer "is patently insufficient to meet the requirements of . . . section 7267.2[(a)(1)] in May, 2005," "[i]n light of the evidence presented to . . . Board of exponential increases in the value of industrial real property in the City of Los Angeles."

We are not persuaded. Kramer cites no applicable authority in support of its position that a new offer of just compensation is mandated under section 7267.2(a)(1) simply because the RON is amended to correct a clerical defect or the property at issue had increased in value since the original offer. It has thus forfeited the issue. (See, e.g., *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1199 [perfunctory assertion unsupported with legal argument or authority deemed without foundation and rejected]; *Do It Urself Moving & Storage, Inc. v. Brown, Leifer, Slatkin & Berns* (1992) 7 Cal.App.4th 27, 35 ["well-settled rule that '"[a] point which is merely suggested by [a party's] counsel, with no supporting argument or authority, is deemed to be

without foundation and requires no discussion." [Citation.]' [Citation.]"].) In any event, the trial court's order of conditional dismissal merely required amendment of the RON already adopted, not a new RON. Such amendment of the existing RON did not trigger the need for a new offer of just compensation under section 7267.2.

6. *Parcel-Specific Blight Finding Not Mandated*

Kramer contends dismissal of this action is mandated, because CRA did not determine that Kramer's property itself was blighted at the time it adopted RON No. 6216. No parcel-specific blight finding is mandated.

In *Berman v. Parker* (1954) 348 U.S. 26, the United States Supreme Court deferred to the legislative and agency determination that the blighted Washington D.C. area of about 5,000 residences, which included unrepairable housing for 64.3 percent, should be condemned and redeveloped in part for streets, schools and other public facilities and the remainder to be redeveloped by private parties for low-cost housing, among other purposes. (*Id*. at pp. 30-31.) The Court declined to address in isolation the challenge of a department store owner that his store was not itself blighted, explaining "community redevelopment programs need not, by force of the Constitution, be on a piecemeal basis--lot by lot, building by building." (*Id*. at p. 35.)

In *Kelo v. New London* (2005) 545 U.S. 469, the City of London, Connecticut, adopted an extensive redevelopment plan to revitalize its economically distressed downtown and waterfront areas, "particularly its Fort Trumbull area," to raise tax and other revenues and "to make the City more attractive and to create leisure and recreational opportunities on the waterfront and in [a] park." (*Id*. at pp. 473-475.) Owners of 15 properties in Fort Trumbull challenged the taking of their properties as violative of the "public purpose"

restriction of the Fifth Amendment of the federal Constitution. "There is no allegation that any of these properties is blighted or otherwise in poor condition; rather, they were condemned only because they happen to be located in the development area." (*Id*. at p. 475.) The United States Supreme Court rejected their claims, reasoning: "Given the comprehensive character of the plan, the thorough deliberation that preceded its adoption, and the limited scope of our review, it is appropriate for us, as it was in *Berman*, to resolve the challenges of the individual owners, not on a piecemeal basis, but rather in light of the entire plan. Because that plan unquestionably serves a public purpose, the takings challenged here satisfy the public use requirement of the Fifth Amendment."[8] (*Id*. at p. 484.)

Under *Berman* and *Kelo*, Kramer's claim that the particular property subject to condemnation must be blighted fails as a matter of federal constitutional law. Kramer does not cite any authority holding that a finding of particular property blight is necessary under California law, and we have found none. We thus need not address whether Kramer's property was blighted at the time the amended RON No. 6216 was adopted.[9] (See, e.g., *Bakersfield Citizens for Local Control v. City of Bakersfield, supra*, 124 Cal.App.4th at p. 1199; *Do It Urself Moving & Storage, Inc. v. Brown, Leifer, Slatkin & Berns, supra*, 7 Cal.App.4th at p. 35.)

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[8] Kramer does not challenge the Redevelopment Plan here as violative of the Fifth Amendment's "public use" mandate.

[9] Kramer acknowledges CRA found the Kramer property was blighted when RON No. 6216 was adopted in 1995. At the hearing Kramer's counsel conceded no California law required "a renewed parcel-specific finding of blight."

7. *Exclusion of Pre-Condemnation Damages Evidence Not Abuse*

Kramer contends the trial court abused its discretion in denying Kramer's motion to present evidence of precondemnation damages based on CRA's unreasonable delay in filing this condemnation action. There was no abuse.

In denying the motion, the trial court found "Kramer is not entitled to precondemnation damages." The court explained: "Although the planning process took a number of years, under the case law the various steps in the planning process do not constitute an official announcement of intent to take which would trigger measurement of an 'unreasonable delay'" and "[t]he action was promptly filed after the [RON] was formally adopted."

In *Klopping v. City of Whittier* (1972) 8 Cal.3d 39, our Supreme Court sanctioned recovery of precondemnation damages, because "when the condemner acts unreasonably in issuing precondemnation statements, either by excessively delaying eminent domain action or by other oppressive conduct, our constitutional concern over property rights requires that the owner be compensated." (*Id.* at pp. 51-52.) "'[T]he threshold question of liability for unreasonable precondemnation conduct is to be determined by the [trial] court, with the issue of the *amount* of damages to be thereafter submitted to the jury only upon a sufficient showing of liability by the condemnee. [Citation.]'" (*City of Ripon v. Sweetin* (2002) 100 Cal.App.4th 887, 897.) "If liability for unlawful precondemnation conduct is not established by the court, the court should exclude evidence of alleged resulting damages from the jury." (*Id*. at pp. 897-898.)

Kramer lists nine instances as reflecting CRA's precondemnation announcements of its intent to acquire the Kramer Property. The earliest is a letter dated October 18, 1996, from CRA to Concerned Citizens acknowledging the latter's readiness to proceed on the Shopping Project. The last is the amended RON adopted on May 5, 2005. Kramer's position is that this "delay of nearly ten

years from the date of [CRA's] first [public] announcement of its intent to acquire the Kramer Property to its initial institution of this action under the legally invalid original RON and recommencement of this action after the adoption of the Amended RON" is per se unreasonable, because "[s]uch an inordinate delay does not reflect time spent in the 'ordinary planning process.'"

In *People ex rel. Dept. Pub. Wks. v. Peninsula Enterprises, Inc.* (1979) 91 Cal.App.3d 332 (*Peninsula Enterprises*), the agency's pre-RON activities evidenced an intent to acquire the property for a proposed freeway project that resulted in a substantial interference with the owner's rights. Following several refused offers to purchase the property, the agency engaged in a course of conduct to frustrate the owner's efforts to develop the property. (*Id.* at pp. 341-342.) The agency's activities thus "reached the acquiring rather than planning stage" despite the absence of a formal resolution of condemnation. (*Id.* at p. 356.) In view of this finding, the court concluded that "the freeway agreement in question should therefore be treated as the type of precondemnation announcement resulting in direct and special interference with private property with which the court in *Klopping* was concerned." (*Ibid.*)

The *Peninsula Enterprises* doctrine that an agency's direct and special interference with an owner's property may give rise to precondemnation liability and entitlement to damages without a formal resolution of condemnation, i.e., RON, applies only in an exceptional case. In *Contra Costa Water Dist. v. Vaquero Farms, Inc.* (1997) 58 Cal.App.4th 883, the court explained: "the *Peninsula Enterprises* doctrine has been invoked sparingly to remedy the most egregious examples of official overreaching. It has been expressly found inapplicable to those situations where the condemning authority 'has not acted unreasonably or capriciously, and has followed orderly procedures, . . .' [Citation.] . . . [S]uch judicial parsimony is warranted. While the reasoning of *Peninsula Enterprises* has

become part of the fabric of California's eminent domain law, it undeniably broadens the concept of compensable injury under *Klopping* to encompass damages arising prior to any official announcement of condemnation. As such, its indiscriminate application risks either inhibiting legitimate preacquisition activities or promoting ill-advised precipitous condemnation action by officials concerned about exposure to additional claims of compensation." (*Id*. at p. 899.)

The present proceeding is not such an exceptional case. The fallacy of Kramer's position lies in the premise that CRA's *unofficial* public announcement of intent to acquire the property is the inception event for determining unreasonable delay. During the planning phase, an agency may make such preliminary announcements, but the triggering announcement must be made during the acquisition phase. (See *Contra Costa Water Dist. v. Vaquero Farms, Inc., supra*, 58 Cal.App.4th at p. 898 ["[I]n order to evaluate whether the condemner has unreasonably delayed initiating condemnation proceedings, the finder of fact must establish at what point the governmental entity's planning activities converted into acquisition activities"]; *Terminals Equipment Co. v. City and County of San Francisco* (1990) 221 Cal.App.3d 234, 246 ["The pivotal issue in every case is whether the public agency's activities have gone beyond the planning stage to reach the 'acquiring stage'"].)

Kramer does not claim any unreasonable delay between the adoption of RON No. 6216 and the filing of this action. Moreover, CRA's first official action indicating its intent to condemn the Kramer property occurred on July 15, 2004 upon the adoption of the original RON No. 6216, and the condemnation action was filed on the same date.

The trial court acted well within its discretion in denying the motion, because Kramer failed to make the requisite prima facie showing for precondemnation damages under *Klopping, supra*.

8. *Admission of Goodwill Expert Testimony Not Abuse*

Kramer contends the trial court erred in admitting the testimony of Madeleine Mamaux, CRA's good will expert, because "[h]er testimony and analysis [regarding a zero goodwill value] violate the Eminent Domain Law and lack a proper foundation." Admission of Mamaux's testimony was not an abuse.

a. *Relevant Proceedings*

Kramer's motion in limine sought to exclude the proposed testimony of Mamaux, because her offered "testimony and analysis are . . . in violation of the Eminent Domain Law and lack a property foundation" in that her "zero goodwill value" opinion is based on "the entirety of the Kramer Metals business," instead of just portion of the business conducted on the property taken. Kramer argued Mamaux's determination to evaluate the business as a whole rather than that on the property taken neglected to follow the three factors she identified as relevant this determination. As to the first, she made no inquiry as to "how the financial records are presented and prepared" and "made no effort whatsoever to separate the financial records of the business' several locations." She also did not take into account the remaining factors, i.e., "how the business is managed [and how it] is operated."

Kramer argued that valuing the business as a whole was improper in view of the latter two factors. In his declaration, Mr. Kramer stated Kramer Metals primarily operated its scrap metal business at 1000 East Slauson Avenue (1000 Property), which was part of the property taken, and at Kramer's 1760 East Slauson Avenue property (1760 Property). Only the 1000 Property is subject to this condemnation action. Mr. Kramer further stated: "The 1000 and 1760 Property operations are complementary to one another, but [each has] independent

business, operational, labor and equipment needs." From the year 2000 until 2006, "the 1000 Property ferrous operations have 'carried' the 1760 Property non-ferrous operations," but in 2006, "the 1760 Property operations have become more profitable."

In its opposition, CRA argued a proper foundation supported Mamaux's determination to value Kramer Metals as a unified whole. In his deposition, Mr. Kramer admitted the 1000 Property and 1760 Property did not operate as separate, stand-alone businesses; rather they were interrelated and constituted "one business." He explained their "profitability is tied together and without the profit of the 1000 [Property], the 1760 [Property] would be forced out of business"; "a good percentage of our customers would probably be tempted to go elsewhere if we did not[,]" unlike "[a] lot of the other scrap metal companies today[,]" "handle everything[,]" i.e., both ferrous and non-ferrous scrap metal operations. Mr. Kramer further explained that for "internal purposes, we consider that nonferrous [materials extracted] from the ferrous operation is the profit that was earned by the ferrous operation." When asked about a general manager at the 1000 Property, Mr. Kramer testified he had "a scale man who may act as general manager from time to time." Also, Mamaux relied upon Kramer Metals' income tax returns, which CRA argued "presented the business as an integrated whole."

Kramer did not dispute CRA's summary of Mr. Kramer's deposition testimony or its characterization of the income tax returns. In its reply, Kramer reiterated that Mamaux failed to adhere to her own criteria and argued CRA "completely ignores the fact that [it] never asked Mr. Kramer if the financial records could be separated by location, never asked what the profits, costs, labor expenses or management expenditures were at the two locations and never even attempted to separately value the operations." (Italics omitted.)

At the hearing, the trial court stated "the real question . . . is shouldn't the jury decide [which basis] is the most appropriate[,] [a]nd would not the jury, listening to both sides and both experts and all cross-examination, reach a conclusion?" In denying the motion in limine, the court explained: "I am a believer in the jury system and my answer . . . to that question is yes they should and would."

b. *Admission of Mamaux Testimony Not Abuse*

Kramer contends the zero goodwill loss finding must be set aside, because Mamaux "improperly commingl[ed] business operations" at the 1000 Property site with those conducted elsewhere. His contention is unsuccessful.

We find unpersuasive CRA's position that Kramer forfeited this claim of error by failing to object at trial on the grounds of lack of foundation and violation of the eminent domain law. The claim of error was preserved by the motion in limine, which raised the identical challenges now urged on appeal. (*People v. Morris* (1991) 53 Cal.3d 152, 187; cf. *People v. Rodrigues* (1994) 8 Cal.4th 1060, 1174 [discretion to make a different ruling as the evidence unfolds establishes in limine ruling necessarily tentative]; *People v. Morris, supra*, at pp. 189-190 [subsequent trial events in trial changing context require renewed objection].)

On the merits, we conclude the trial court acted with within its broad discretion in admitting Mamaux's testimony. (*Greer v. Buzgheia* (2006) 141 Cal.App.4th 1150, 1156 [broad authority to admit or exclude evidence in limine context]; *People v. Ochoa* (1998) 19 Cal.4th 353, 408 [abuse when court's "rulings fall 'outside the bounds of reason'"].) Mamaux was entitled to rely on Mr. Kramer's deposition testimony that Kramer Metals operates an integrated business at the 1000 Property and 1760 Property sites, and that such operations constituted

"one business." As the trial court reasoned, the question whether reliance on this factor undermined Mamaux's opinion testimony was a question for the jury.

9. *No Interest on Probable Compensation Warranted*

Kramer contends the trial court "failed to award Kramer interest accrued from the time the CRA was authorized to take possession of the Kramer Property" to entry of judgment. We find Kramer has forfeited its right to the interest due.

The earliest date on which interest began to accrue was the date CRA was "authorized to take possession of the property as stated in an order for possession." (§ 1268.310, subd. (c).)[10] At the February 11, 2008 hearing in the trial court, CRA noted that Kramer Metals was still on the site winding down and that the interest statutes provide an offset. In particular, section 1268.330 requires an offset for, inter alia, the value of the defendant's possession (which is presumed to be the rate of interest calculated on the compensation awarded).[11] Such an offset is

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[10] Section 1268.310 provides:

"The compensation awarded in the proceeding shall draw interest, computed as prescribed by Section 1268.350, from the earliest of the following dates:

"(a) The date of entry of judgment.

"(b) The date the plaintiff takes possession of the property.

"(c) *The date after which the plaintiff is authorized to take possession of the property as stated in an order for possession.*" (Italics added.)

[11] Section 1268.330 provides:

"If, after the date that interest begins to accrue, the defendant:

"(a) Continues in actual possession of the property, the value of that possession shall be offset against the interest. For the purpose of this section, the value of possession of the property shall be presumed to be the rate of interest calculated as prescribed by Section 1268.350 on the compensation awarded. This presumption is one affecting the burden of proof.

"(b) Receives rents or other income from the property attributable to the period after interest begins to accrue, the net amount of these rents and other income shall be offset against the interest."

"mandatory," and the public agency is entitled to it "as a matter of law." (*Inglewood Redevelopment Agency v. Aklilu*, *supra,* 153 Cal.App.4th at p. 1121.)

At the April 2, 2008 hearing, Kramer's counsel argued that under section 1268.310, subdivision (c), Kramer was entitled to interest from the date CRA was authorized to take possession pursuant to the order for possession. CRA's counsel responded that CRA was entitled to an offset because Kramer Metals remained in possession. CRA's counsel stated that the period of possession was "[f]rom May 11, 2006 until March 3, 2008." He argued that no interest was due, because Kramer never paid CRA any rent for the holdover period and "[s]ection 1268.330, subsection (a), presumes [such interest] is the equivalent of the rent [CRA] could have charged . . . Kramer." Kramer's counsel did not disagree that Kramer Metals remained in possession. Rather, she simply reiterated her position that the property owner should be paid interest from the date for possession set forth in the possession order, even though, of course, section 1268.330 provided a mandatory offset for the value of Kramer Metal's possession.

Kramer contends no forfeiture arose from the failure to controvert CRA's representation that no interest was owed in view of its right to an offset. Relying on the discussion between CRA's counsel and the trial court regarding the issue of rent during the holdover period, Kramer argues "at no time did counsel for . . . CRA make any statement with respect to any offset of interest that related to the CRA Possession Period; accordingly, Kramer could not possibly have acquiesced." We are not persuaded. The relevant timeframe is Kramer's holdover possession, not the "CRA Possession Period." Kramer fails to make any applicable argument supported with record references and legal authority demonstrating Kramer controverted CRA's representation or offered evidence that the fair market rent for the holdover period was not equivalent to the interest otherwise owed. (*Susag v. City of Lake Forest* (2002) 94 Cal.App.4th 1401, 1416 [points deemed waived or

meritless "where a party provides a brief 'without argument, citation of authority or record reference establishing that the points were made below'"].)

Under these circumstances, we conclude that Kramer has forfeited its right to claim any interest otherwise due by failing to: (1) dispute CRA's representation that Kramer's holdover possession was equivalent to the interest Kramer otherwise would have been awarded; (2) present evidence that the fair rental value of the property was zero or less than the interest accrued; and (3) request a hearing on the issue of whether Kramer was entitled to interest in an amount certain beyond that negated by Kramer's holdover possession. "[A]s a matter of law, [CRA] was entitled to an offset against the interest due on the judgment in the amount of the rent applicable to the period of time [Kramer] remained in possession after the effective date of the order for possession. No hearing was required because the offset was mandatory." (*Inglewood Redevelopment Agency v. Aklilu, supra,* 153 Cal.App.4th at p. 1121.) A hearing also was not required, because "no factual dispute [was] presented to the trial court that required a hearing." (*Ibid*.)

DISPOSITION

The judgment is affirmed. CRA shall recover its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

WILLHITE, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.