SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 03/25/15 TIME: 8:30 A.M. DEPT: B CASE NO: CV1404718

PRESIDING: HON. ROY O. CHERNUS

REPORTER: CLERK: JACKIE LANGFORD

PETITIONER: COMMUNITY VENTURES PARTNERS, INC. and RESPONDENT: COUNTY OF MARIN	

NATURE OF PROCEEDINGS: MOTION – FOR JUDGMENT DENYING THE PEREMPTORY WRIT [RESP] COUNTY OF MARIN

RULING

Respondent's motion for Judgment on the Pleadings (Code Civ. Proc. § 1094), arguing Petitioner cannot state a cause of action for violation of the Brown Act, is denied.

This lawsuit is filed under Govt. Code § 59460(a), which authorizes any interested party "to commence an action by mandamus, injunction, or declaratory relief . . . to determine the applicability of this chapter to past actions of the legislative body, subject to Section 54960.2."

It is a violation of the Brown Act for the legislative body at a public meeting to undertake "an action or discussion [] on any item not appearing on the posted agenda" except for brief questions, announcements, and reports. (Govt. Code § 54954.2 (a)(2).)

Respondent relies on *Boyle v. City of Redondo Beach* (1999) 70 Cal.App.4th 1109 to support its claim that Petitioner cannot state a cause of action because the facts alleged in the petition establish that the Board only "discussed" the status of the draft Housing Element, and it took no "action" pursuant to sections 54960(a) and 54960.1(a) on which to base a claimed violation of the Brown Act.

The *Boyle* decision concerned only section 54960.1(a), which permits interested persons to file a lawsuit to declare a prior "action taken" by the governmental body to be "*null and void*", if the action was taken in violation of the agenda notice requirements for special meetings in § 54956.

The *Boyle* decision did not discuss a lawsuit like this one under § 54960.2(a) – "an action to determine the applicability of this chapter to past actions of the legislative body", based on an alleged violation of § 54960(a). This language was added to the Brown Act much later. Section 54954.2(a)(2), which more broadly provides that "No *action or discussion* shall be undertaken . . . ." was added in 2005, and section 54960.2(a) was added in 2012.

The *Boyle* decision cannot be used to construe § 59460(a) as limiting lawsuits to "actions taken" and not to "discussions", as this would read the prohibition for non-agendized "discussions" out of § 54954.2(a)(2).

Respondent's subsidiary argument – a writ of mandate does not lie to determine if the Board's discussion fell into the exception for "a brief announcement, or [] a brief report on his or her own activities" (§ 54954.2 (a)(2)), is not persuasive. Section 59460(a) permits the District Attorney or any interested person to file a mandamus petition "to determine the applicability of this chapter to past *actions* of the legislative body."

As discussed, the term "actions" in this context does not refer only to votes taken or decisions made by the Board, but includes "discussions" conducted in violation of the agenda notice requirement.

Any determination of whether the Board's discussion fell into these exceptions raises a question of fact that cannot be determined in the pleading motion.

The motion for judgment on the petition is denied.

Parties must comply with Marin County Superior Court Local Rules, Rule 1.6b to contest the tentative decision. In the event that no party requests oral argument in accordance with Rule 1.6b, the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 1.7.