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County Was Wrong To Make Agreement Available For Public Inspection Only After The Board Meeting.

In 2011, Squaw Valley Real Estate LLC (Squaw) proposed to develop a resort on approximately 94 acres near Lake Tahoe. Shortly thereafter, Placer County began environmental review for the project under the California Environmental Quality Act. The County released a draft Environmental Impact Report (EIR) that analyzed the project's potential impacts. Several parties expressed concern over the County's analysis. For example, the California Attorney General's (AG's) office warned that absent additional environmental review, the office would file litigation challenging the County's EIR.

Subsequently, the County posted the agenda for an upcoming meeting of its Board of Supervisors (Board), during which the Board would consider whether to approve the EIR. Among other things, the agenda said that at its November 15, 2016 meeting, the Board would consider "a recommendation from the Placer County Planning Commission for APPROVAL of the following: (1) a resolution to certify the Village at Squaw Valley Specific Plan Final EIR; and (2) an ordinance to approve the Development Agreement relative to the Village at Squaw Valley Specific Plan". At the same time, the County posted the agenda, the County also made available for public inspection the documents discussed on the agenda, including the proposed development agreement.

The same day the County posted the agenda, two deputy AG's met with counsel for the County and Squaw. During the meeting, the parties agreed the AG would not sue if Squaw paid an air quality mitigation fee. The County then updated the development agreement accordingly. At 5:36 p.m. on November 14, 2016, County counsel emailed the updated agreement to the County clerk. After receiving the email, the County clerk placed copies of the updated agreement in an office where the public could inspect County records. But that office was only open from 8:00 a.m. to 5:00 p.m. on weekdays. At 5:42 p.m., the County clerk emailed the updated documents to all Board members. The Board met the next day. Sierra Watch, a conservation non-profit organization, attended. The Board voted to approve the agreement.

Sierra Watch challenged the County's approval in two lawsuits, including one which alleged the County approved the project in violation of the Ralph M. Brown Act. The Brown Act imposes several requirements on local agencies that are intended to ensure the openness of legislative body's actions and deliberations.

Sierra Watch contended the County violated two sections of the Brown Act: (1) Section 54954.2, which requires counties to post an agenda at least 72 hours before each meeting “containing a brief general description of each item of business to be transacted or discussed at the meeting; and (2) Section 54957.5, which requires counties that distribute any meeting material to their boards less than 72 hours before an open meeting to make that material “available for public inspection . . . at the time the writing is distributed to all, or a majority of all, of the [board] members.”

On appeal, the California Court of Appeal determined the County’s agenda was misleading in violation of Section 54954.2. The agenda indicated its Board would “consider a recommendation from the Placer County Planning Commission” to adopt “an ordinance to approve the Development Agreement relative to the Village at Squaw Valley Specific Plan.” At the time, the County also shared a copy of the agreement that the Planning Commission had recommended. However, the agreement the Board considered was substantially different from the agreement on the agenda because it contained the eleventh-hour air quality mitigation fee. Thus, the Court concluded the agreement was altered without notice, and thereby misled the public. Even though the court found the County’s agenda was inaccurate, the Court determined that Sierra Watch failed to show the County violated Section 54954.2. Thus, the court declined to nullify the approval of the project.

Next, the court concluded that the County also violated Section 54957.5. The court disagreed with the County’s argument that it placed the documents in an office where records are “available for public inspection” at the same time it distributed them to the Board. The court reasoned that the documents were not available for public inspection because the office was closed when the Board members received the documents. Relying on the plain language of the statute, the court found that that the County did not make the documents available for public inspection at the time they were distributed to all of the Board members.

Sierra Watch v. Placer Cty. (2021) 69 Cal.App.5th 1.

NOTE:

In a blow to paper conservation efforts, the court noted that public educational entities cannot satisfy Section 54957.5 by merely posting materials online.

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