ORDER

CASE NUMBER: BC443280

CASE NAME: *City of Palmdale, et al. v. City of Lancaster, et al.*

This matter proceeded to trial before the court on December 16, 2011. Trial consisted of pre- and post-trial briefs, declarations, documentary evidence, matters of which the court was able to take judicial notice, and closing arguments of counsel on December 16, 2011. Having considered the evidence and arguments of the parties, the court makes the following order.

Summary Of Order

As to the first through fourth causes of action: The court declares and finds as follows:

The City of Lancaster and Lancaster Redevelopment Agency violated Government Code section 53084 and Health and Safety Code section 33426.7 respectively when they agreed to provide financial assistance in the amount of $604,000 to a vehicle dealer, 7 Jays, LLC/Antelope Valley Chevrolet, Inc., relocating from Palmdale to Lancaster.

All resolutions adopted by the City of Lancaster and/or the Lancaster Redevelopment Agency, and all contracts entered pursuant to said resolutions that purport to provide financial assistance in the amount of $604,000 to 7 Jays, LLC/Antelope Valley Chevrolet, Inc. are declared void and invalid pursuant to Code of Civil Procedure sections 860 and 863, and may not be enforced.

The City of Lancaster and the Lancaster Redevelopment Agency are enjoined for a period of two years from the date of the vehicle dealer's relocation (November 9, 2010) from providing any financial assistance to 7 Jays LLC/Antelope Valley Chevrolet, Inc. The preliminary injunction issued September 24, 2010, is extinguished and replaced by this permanent injunction.

The court issues an ordinary writ of mandate pursuant to Code of Civil Procedure section 1085 and a writ of administrative mandate pursuant to Code of Civil Procedure section 1094.5 directing the City of Lancaster and the Lancaster Redevelopment Agency to set aside their approvals of the resolutions adopted August 10, 2010 concerning financial assistance in the amount of $604,000 to be provided to relocating vehicle dealer 7 Jays, LLC/Antelope Valley Chevrolet, Inc.

The City of Lancaster and Lancaster Redevelopment Agency did not violate Government Code section 53084 or Health and Safety Code section 33426.7 when they adopted resolutions and entered agreements concerning their purchase of parking lots from Hawse Automotive Properties, LLC and JCH Automotive. Consequently, the resolutions and

resulting agreements entered concerning the parking lots are not void and may be enforced. This includes the Second Amendment To Disposition And Development Agreement entered into November 8, 2010 and attached to the Supplemental Complaint as Exhibit 9. The court denies Palmdale's petitions for an ordinary writ of mandate and a writ of administrative mandate as to the resolutions and agreements concerning the purchase of the parking lots.

No damages are available to Palmdale under any cause of action.

Palmdale does not have unclean hands and is not barred from obtaining equitable relief pursuant to the unclean hands doctrine.

As to the fifth and sixth causes of action: the court declares and finds as follows.

The City of Lancaster, the Lancaster Redevelopment Agency, and individual defendants R. Rex Parris, Ronald D. Smith, Marvin Crist, Ken Mann, and Sherry Marques did not violate the Brown Act. They are entitled to judgment on the Brown Act causes of action. No writ shall issue against the foregoing defendants as to any alleged violation of the Brown Act. No act or agreement shall be invalidated or held to be void or unlawful based on any alleged violation of the Brown Act. To the extent that any preliminary injunction was issued in connection with the fifth and sixth causes of action, it is extinguished as to those causes of action.

All Doe defendants are dismissed.

Parties/Procedural History

Plaintiffs are the City of Palmdale and the Community Redevelopment Agency of the City of Palmdale (hereinafter collectively "Palmdale"). They filed this action on August 11, 2010. Thereafter, they amended the complaint on December 16, 2010 and also filed a Supplemental Complaint dated December 16, 2010.

Defendants include the City of Lancaster, Lancaster Redevelopment Agency, Lancaster City Council, R.Rex Parris (Mayor of Lancaster), Ronald D. Smith, Marvin Crist, Ken Mann, and Sherry Marquez. (The City and its Redevelopment Agency are hereinafter referred to collectively as "Lancaster" when other names are not utilized). The suit also names "All persons interested in the matters of Lancaster Redevelopment Agency Resolution No. 16-10 and City of Lancaster Resolution No. 10-62 . . . and Related Agreements to provide Financial Assistance to a Relocating Vehicle Dealer.

The following were listed originally as real parties in interest, but the complaint was amended on December 16, 2010 to make them all defendants: Juan Lou Gonzales, 7 Jays, LLC and Antelope Valley Chevrolet (hereinafter referred to collectively as "Gonzales" or "the Gonzales defendants" when the parties' individual names are not utilized). Others listed as real parties in interest include Hawse Automotive Properties, LLC and JCH Automotive (sometimes referred to collectively as "Hawse," or "the

Hawse defendants" when the parties' individual names are not utilized). Also named as real parties are two General Motors entities. The court sustained their demurrers to the complaint without leave to amend prior to trial.

On September 24, 2010, the court issued a preliminary injunction against Lancaster precluding it from providing certain financial assistance to certain defendants pending a final resolution of this matter.

Certain parties demurred to the Amended Supplemental Complaint on the ground that they were not proper parties. The court sustained the demurrers of the Gonzales and Hawse defendants without leave to amend as to the first, second, third, fifth and sixth causes of action. These defendants are not parties to those causes of action.

As to the fourth cause of action for declaratory relief, the court sustained the demurrer of Antelope Valley Chevrolet, Inc. to the cause of action and overruled the demurrers of Gonzales, 7 Jays, LLC. and the Hawse defendants, who remain parties to that cause of action. They are parties to the agreements that Palmdale seeks to invalidate and thus are proper parties to the declaratory relief cause of action.

The causes of action after the first cause of action are not labeled as being against any particular defendants. The court ruled previously that all causes of action except the fourth cause of action for declaratory relief [as well as the sixth cause of action for declaratory relief] are brought only against Lancaster. It also ruled that the fourth cause of action for declaratory relief is properly brought against Lancaster, Gonzales, 7 Jays and the Hawse defendants, but not against Antelope Valley Chevrolet. Consequently, the court treats Lancaster as the sole defendant in all causes of action except the declaratory relief causes of action. The court treats all other defendants as defendants in the declaratory relief causes of action only.

Causes of Action

The first cause of action is against the City of Lancaster and the Lancaster Redevelopment Agency seeking to invalidate agreements they allegedly entered in violation of Government Code section 53084 and Health and Safety Code section 33426, respectively. (These statutes are referred to collectively hereafter as "SB 114.")

Palmdale alleges that these entities offered to provide financial assistance of $604,000 to defendant 7 Jays, LLC/Antelope Valley Chevrolet, Inc. for the purpose of enticing its owner, Juan Gonzales, to relocate from Palmdale to Lancaster.

In its Supplemental Complaint, Palmdale added the allegation that Lancaster provided financial assistance to the Hawse defendants, who leased real property to a vehicle dealer (7 Jays, LLC/Antelope Valley Chevrolet) which relocated from Palmdale to Lancaster. Financial assistance to a party who sells or leases to a relocating vehicle dealer is also impermissible under Government Code section 53084 and Health and Safety Code section 33426.7.

Palmdale also claims that Lancaster's purchase of certain parking lot property from Hawse was improper under SB114 because the transaction included financial assistance to Hawse, which was leasing property to 7Jays, LLC/Antelope Valley Chevrolet.

Palmdale prays that the foregoing agreements entered into by Lancaster be declared unlawful, along with Lancaster's resolutions concerning the agreements, pursuant to SB 114 and Code of Civil Procedure sections 860 and 863.

The second cause of action petitions the court to issue a writ of ordinary mandate pursuant to Code of Civil Procedure section 1085 directing Lancaster to set aside its approvals of resolutions adopted August 10, 2010 and any resulting agreements by which Lancaster offered financial assistance to the Gonzales and Hawse defendants. The alleged financial assistance is the $604,000 and other assistance to Hawse referred to in the first cause of action.

The third cause of action petitions the court to issue a writ of administrative mandate pursuant to Code of Civil Procedure section 1094.5 providing the same relief as that sought in the second cause of action.

The fourth cause of action asks the court to declare pursuant to Code of Civil Procedure section 1060 that the resolutions of August 10, 2010 and any resulting agreements violate SB 114 and are invalid, illegal and have no force or effect.

The fifth cause of action petitions the court to issue an ordinary writ of mandate pursuant to Code of Civil Procedure 1085 setting aside certain of Lancaster's actions due to alleged violations by Lancaster of the Brown Act.

The sixth cause of action seeks declaratory relief as to certain alleged violations of the Brown Act.

Analysis Of First Through Fourth Causes Of Action

The first, second, third, and fourth causes of action turn on the issue of whether the City of Lancaster violated Government Code sections 53084 and whether Lancaster's Redevelopment Agency (hereinafter collectively "Lancaster") violated Health and Safety Code section 33426.7 (paralleling section 53084, but addressing Redevelopment Agencies). (Collectively "SB 114.") All four causes of action rely on the same facts and substantive law.

Facts

Mr. Gonzales was an owner of Saturn of Antelope Valley, located in the Palmdale Auto Mall. General Motors discontinued the Saturn line. Mr. Gonzales sought to obtain a Chevrolet dealership franchise from General Motors. General Motors agreed to give Mr. Gonzales the franchise if he could comply with certain requirements, one of which

concerned the type of parcel on which the dealership would be located and another of which imposed a short deadline by which the dealership must open in the market area.

Mr. Gonzales worked through an LLC he had created, named "7 Jays, LLC." That entity was owned in whole or substantial part by Mr. Gonzales. The entity formed to operate **the new Chevrolet dealership was Antelope Valley Chevrolet, Inc. Mr. Gonzales owned** a substantial part of that dealership.

Acting for 7 Jays and Antelope Valley Chevrolet, Mr. Gonzales attempted in good faith to lease or purchase land in the Palmdale auto mall that was available and suitable for the Chevrolet dealership from its owner, the City of Palmdale. Palmdale flatly refused to lease or sell it to him and otherwise made it impractical for Mr. Gonzales to locate his Chevrolet dealership in the Palmdale auto mall. Palmdale's apparent reason was that Palmdale preferred to have another dealer, Mr. Maile (who had a history of having a dealership in the Palmdale auto mall,) run any Chevrolet dealership that was to be operated in the Palmdale auto mall.

In its dealings with Mr. Gonzales, Palmdale sought to help Mr. Maile to get the Chevrolet dealership franchise instead of Mr. Gonzales. Eventually, when Mr. Gonzales believed that Palmdale had firmly and finally rejected his efforts to start the Chevrolet dealership in Palmdale, and Mr. Gonzales believed that he had to act immediately or fail to meet his deadline for opening the new Chevrolet dealership, he began negotiations with Lancaster for land on which to place his Chevrolet dealership in the Lancaster auto mall. Mr. Gonzales had virtually no choice, as General Motors had given him an imminent deadline by which he was required to open his dealership and because the Lancaster auto mall was the only location in the market area that would meet General Motors' requirements other than the land he had sought to lease or buy from Palmdale in the Palmdale auto mall.

After Palmdale had prevented Mr. Gonzales from locating his new Chevrolet dealership there, Palmdale began to complain about his negotiations with Lancaster, to place it there.

Lancaster held a City Council meeting on August 10, 2010 at which it adopted certain resolutions and authorized entry into contracts with third parties. Pursuant to these agreements and resolutions, Lancaster offered financial assistance amounting to $604,000 to Antelope Valley Chevrolet. In addition, it authorized the purchase of real property for parking lots from the Hawse defendants, who were to lease certain other property to Antelope Valley Chevrolet. As part of the transaction, Lancaster agreed to give the Hawse defendants certain tax rebates.

In November 2010, Lancaster entered into an agreement with the Hawse defendants to purchase the parking lots. These parking lots were inside the Lancaster auto mall, close to the site where Mr. Gonzales was going to place Antelope Valley Chevrolet, Inc. The agreement by which Lancaster purchased the parking lots provided in part that Hawse Automotive would receive a 100% sales tax rebate with respect to a Hawse-affiliated dealer and the rebate would be credited to a note owed to Lancaster's Redevelopment Agency.

Palmdale contends that Lancaster's sales tax rebate agreement in connection with its purchase of the parking lots constituted a prohibited offer of financial assistance to Hawse, who became the landlord of 7 Jays, LLC/Antelope Valley Chevrolet in the Lancaster auto mall. As noted above, Government Code section 53084 and Health and Safety Code section 33426.7 prohibit cities and redevelopment agencies from providing financial assistance (including any tax incentive or rebate) to an entity that sells or leases land to a vehicle dealer relocating from one city to another in the same market area.

Palmdale has not borne its burden of proof that the tax rebate agreement related to 7 Jays/ Antelope Valley Chevrolet. Although Palmdale presented some evidence to that effect, Lancaster provided credible declarations under penalty of perjury that are more persuasive than Palmdale's evidence. These assert that the purchase of the parking lots was made for the purpose of providing overflow parking for City events independent of Antelope Valley Chevrolet. Also, the written agenda described the parking lots as a "*public* parking lot," not parking for the benefit of Antelope Valley Chevrolet patrons.

The court finds that Palmdale has not borne its burden of proof of establishing that the parking lot agreements with Hawse were entered by Lancaster in connection with or for the benefit of Mr. Gonzales, 7 Jays, LLC or Antelope Valley Chevrolet.

The subsequent analysis addresses only the financial assistance of $604,000 to the Gonzalez defendants, as plaintiffs have not established that Lancaster gave any financial assistance to the Hawse defendants in their capacity as a landlord of 7 Jays, LLC/Antelope Valley Chevrolet or in connection with the relocation of 7 Jays, LLC/Antelope Valley Chevrolet.

Governing Law

SB 114, as embodied in Government Code section 53084(a) states:

"Notwithstanding any other provision of this part, a local agency shall not provide any form of financial assistance to a vehicle dealer . . . that is relocating from the territorial jurisdiction of one local agency to the territorial jurisdiction of another local agency but within the same market area."

Health & Safety Code section 33426.7(a) sets forth the same prohibition as to a redevelopment agency.

The same prohibitions are extended to preclude a city or redevelopment agency from giving financial assistance to an entity that leases or sells to a relocating vehicle dealer.

The parties agree that Palmdale and Lancaster are in the same market area and that any financial assistance occurred within the 365-day period elsewhere prescribed by SB 114.

For purposes of SB 114, a vehicle dealer is defined as a retailer that is also a dealer as defined by Section 285 of the Vehicle Code. (Gov. Code § 53084(b)(6).) The parties do not dispute that Saturn of Antelope Valley was a dealership and that 7 Jays/Chevrolet of Antelope Valley are both dealers. Nor do they dispute that Gonzales had an ownership interest in both Saturn of Antelope Valley and 7 Jays/Chevrolet of Antelope Valley.

The dispositive issue is whether defendant 7 Jays, LLC/Antelope Valley Chevrolet "relocated" within the meaning of SB 114.

The Definition Of "Relocating" In SB 114 Is Different From Its Ordinary Meaning, And Here A Vehicle Dealer Relocated And Was Promised Financial Assistance By Lancaster In Violation Of SB 114

As used in SB 114, "relocating" does not bear its ordinary meaning. For purposes of SB 114, "relocating" is defined as "the closing of a vehicle dealer in one location and the opening of a vehicle dealer . . . in another location within a 365-day period *when a person or business entity has an ownership interest in both the vehicle dealer* . . . that has closed or will close and the one that is opening . . . ." (Gov. Code § 53084(b)(5).) (Emphasis supplied.)

Thus, for purposes of SB 114, the term "relocating" does not mean what "relocating" usually means. While the term "relocating" usually refers to the movement of a single entity from one place to another, SB 114 deviates from the common understanding of that term. SB 114 includes within the term "relocating" what happens when one entity partly-owned by A closes, and then another distinct entity partly-owned by A opens in another location. It does not have to be the same entity to "relocate." It need not sell the same cars or have the same ownership structure or name.

That is what happened here. A Saturn dealership partly owned by Mr. Gonzales (Antelope Valley Saturn) closed in Palmdale and a Chevrolet dealership (7 Jays, LLC/Antelope Valley Chevrolet) partly owned by Gonzales opened in Lancaster.

Because Gonzales had an ownership interest in both, "relocation" occurred.

Lancaster offered financial assistance to a vehicle dealer, 7 Jays, LLC/Antelope Valley Chevrolet, Inc., that was relocating, thereby violating SB 114.

However, the court finds that Lancaster did not know at the time that its agreements to provide financial assistance to Antelope Valley Chevrolet allegedly violated SB 114. It mistakenly believed that SB 114 was inapplicable because it did not understand that the term "relocates" in SB 114 did not bear its plain and ordinary meaning. Lancaster apparently believed that the dealership was not "relocating" because the Saturn dealership closing in Palmdale dealt in a different model car than the Chevrolet dealership opening in Lancaster and that the Saturn dealership was closing involuntarily due to General Motors' discontinuance of the Saturn line of cars. Thus, despite

Palmdale's argument to the contrary in its post-trial brief, Lancaster did not act with conscious disregard of the rights of Palmdale.

At trial, Palmdale argued that it should be allowed to recover damages or restitution of funds as a result of Lancaster's breach of SB 114. However, the court finds that, if Palmdale suffered any damages as a result of the relocation, Palmdale caused its own damages by refusing to sell or lease available real property in the Palmdale Auto Mall to the Gonzales parties, by leading Mr. Gonzales on so long that Mr. Gonzales had to go elsewhere on an expedited basis to meet his deadline, by proposing patently unworkable terms for any possible transaction, and by conditioning any deal with Mr. Gonzales on him waiting beyond the General Motors deadline to see if Mr. Maile could wrest the General Motors franchise away from Mr. Gonzales.

Although Palmdale had no duty to negotiate on a reasonable basis, or at all, with the Gonzales defendants, if it had, it is highly likely that Antelope Valley Chevrolet, Inc. would have been located in Palmdale, not Lancaster. Palmdale has failed to bear its burden of proof as to causation of the relocation and thus causation of damages, if any.

The court also finds that Lancaster did not receive any funds in which Palmdale had any ownership interest or that Palmdale had any right to receive. Even if Lancaster received revenues due to its violation of SB 114, they were not revenues to which Palmdale was entitled under the circumstances. They were not Palmdale's tax revenues.

Palmdale's Argument That It Should Recover Damages Pursuant To Its Complaint Is Unfounded Here

Palmdale argues that it should recover damages or disgorgement of profits from Lancaster based on tax revenues generated by Antelope Valley Chevrolet. The court need not reach the legal issue of whether there might be some circumstance under which damages or disgorgement of profits might be appropriate, because it would be inequitable under the facts presented here.

The complaint did not seek damages and the parties were not on notice that damages would be sought in this writ and declaratory relief proceeding. Indeed, equitable relief generally is only available when there is an inadequate remedy at law. If adequate damages were available, the requested writ would not issue. It would be inequitable for Palmdale to have it both ways under these circumstances. It has petitioned for writ relief. The defendants had notice Palmdale was seeking such relief, but not damages. An award of damages would be a surprise to the defendants, inequitable in light of the facts, and potentially duplicative in light of the writ that will be issued.

In the absence of any damages caused by Lancaster, and in light of the facts presented, it would be inequitable to award monetary damages to Palmdale.

Since Lancaster did not receive any funds which Palmdale had a right to receive or in which it had an ownership interest, and in light of the facts presented, it would be inequitable to require Lancaster to disgorge any funds.

Palmdale argues that this case is distinguishable from *County of San Bernardino v. Court of Appeal* (2007) 158 Cal.App.4th 533, 542-544 because that case law does not apply when the defendant acted with a conscious disregard of the plaintiff's rights or when the defendant was a fiduciary for the plaintiff. Whether or not Palmdale's contention is correct, Palmdale did not bear its burden of proof that Lancaster acted with conscious disregard of its rights. Moreover, Lancaster was not a fiduciary for Palmdale. Thus, Palmdale's argument fails.

Lancaster's Argument That Palmdale Had Unclean Hands Is Not Persuasive

Lancaster argued that Palmdale should be denied equitable relief because it had unclean hands. However, Palmdale's papers are persuasive on this issue. The doctrine of unclean hands is inapplicable to Palmdale's conduct in this case and Lancaster's argument is not well-founded.

Analysis Of The Fourth And Sixth Causes Of Action

The fourth and sixth causes of action seek declarations that Lancaster violated the Brown Act in connection with a meeting held on August 10, 2010. Both causes of action rely on the same material facts and law.

Prior to trial the parties made various arguments in connection with a motion for summary judgment. After the court circulated a written tentative on that motion rejecting many of the parties' arguments, and after the court circulated its preliminary analysis of the issues in a document titled "Talking Points For Argument At Trial 12/16/11," Palmdale appears to have abandoned many of the arguments made at the summary judgment motion. They were not raised in the trial briefs or at closing argument. The court will consider only the arguments made in the trial briefs and in closing argument.

The complaint alleges five violations of the Brown Act. However, Palmdale confined its arguments at trial to only two of these: (1) that Lancaster violated Government Code sec. 54954.2(a)(1) in failing to post a sufficient agenda 72 hours in advance of the August 10, 2010 meeting, and (2) that Lancaster acted at the August 10 meeting on a matter that was not sufficiently described on the agenda in violation of Government Code sec. 54954.2(a)(2).

The gravamen of both violations alleged by Palmdale is that Lancaster intended to discuss a proposal to acquire parking lots located in the Lancaster Auto Mall from JCH Automotive Properties, LLC at the August 10 meeting, but the notice posted 72 hours in advance listed the wrong assessor's parcel numbers for the parcels and that this was not corrected until one day before the August 10 meeting, in violation of the Brown Act's 72 hour notice rule.

Lancaster responds, *inter alia,* that it substantially complied with Brown Act requirements and that its resolutions at the August 10, 2010 meeting are not void because Palmdale was not individually prejudiced as a result of any Brown Act violation.

The relevant undisputed facts are as follows.

On August 6, 2010, Lancaster published an agenda for a joint meeting to be held on August 10, 2010 describing the Hawse real property and the intent to purchase it. The agenda listed the incorrect assessor's parcel numbers for the property.

The agenda item read: "Adopt City/Agency Resolution No. 16-10, authorizing the City Manager/Executive Director to execute an agreement, and any related documents with JCH Automotive Properties, LLC for the acquisition of property in the Lancaster Auto Mall (APN 3125-024-008 and 009) to provide a public parking lot, and making findings in connection therewith." (Bogozian Dec. para. 15)

On August 9, 2010, the agenda was corrected to accurately reflect the assessor's parcel numbers for the subject real property.

The agenda posted on August 6 correctly stated that the parcels were owned by JCH Automotive Properties LLC and were located in the Lancaster Auto Mall. JCH Automotive only owns two parcels in the Lancaster Auto Mall. There are a total of 16 parcels in the mall.

On August 10, 2010, prior to the public meeting, Plaintiff's legal counsel served Lancaster with a written demand that Lancaster cure and comply with the Brown Act in regards to Lancaster's failure to include the proper assessor's parcel numbers for the subject real property.

Plaintiff did not serve any other demands to cure alleged Brown Act violations.

At the August 10, 2010 public meeting, Lancaster authorized the purchase of the parking lots by delegating the authority to negotiate such acquisition to the City Manager/Executive Director.

The Brown Act, Government Code §§ 54950 et seq., is intended to ensure the public's right to attend and participate in the meetings of public agencies. (*International Longshoremen's & Warehousemen's Union v. Los Angeles Export Terminal, Inc.* (1999) 69 Cal.App.4th 287, 293.) It generally requires that meetings of legislative bodies of local agencies be open and public and any action taken in violation of the open meetings laws may be voided. (Gov. Code §§ 54953, 54960.1(d).)

Government Code section 54954.2(a) requires that the legislative body post an agenda, at least 72 hours before the public meeting, containing a brief general description of each

item of business to be transacted or discussed at the meeting including items to be discussed in closed session not to exceed 20 words.

Palmdale concedes that "compliance with the description requirement need not be strict compliance. The law provides that substantial compliance is acceptable." (Gov. Code, sec. 54954.5).

Palmdale points out that Government Code section 54954.5(b) states that substantial compliance is satisfied with respect to describing items to be discussed in *closed session* pursuant to Government Code section 54956.8 (real property negotiations) if the following information is provided: the street address or parcel number of the real property, the names of the negotiators attending the closed session, the negotiating parties (as opposed to their bargaining agents), and whether the negotiations will concern price, terms of payment, or both.

Lancaster argues that section 54954.5(b) is inapplicable to matters to be discussed in open session, presumably because the public does not need as much notice about a meeting they can attend if they wish, as compared to a meeting they cannot attend.

The Issue of Substantial Compliance

If Lancaster's actions concerning the original and corrected agendas constituted substantial compliance, the court need not reach the other issues raised in connection with the Brown Act.

Lancaster argues that there was substantial compliance because it would have been very simple for a person to figure out what parcels were really involved due to the public availability of real estate records, the fact JCH owned only two parcels in the mall, and the fact that the mall consisted of only a total of 16 parcels.

Palmdale appears to argue that the only way to perform in substantial compliance in connection with a real estate acquisition is by disclosing the facts set forth in Government Code sec. 54954 (b) 72 hours in advance of the meeting. One item required by that section is the assessor's parcel number. Palmdale seems to argue that, since the material posted on the agenda did not include the correct parcel numbers, and did not comply with Government Code sec. 54954(b), Lancaster failed to substantially comply with the relevant requirements.

The problem with this argument is that section 54954(b) does not set forth the requirements for an open session such as the one at issue. It only applies to closed sessions. Palmdale seems to argue whatever requirements apply to closed sessions apply equally to open sessions. On the other hand, Lancaster asserts that the requirements for open sessions need not be as strict as those for closed sessions, because the public cannot check agenda accuracy when the session is closed and they can when the session is open. Thus, the stringent requirements for closed sessions need not apply to open sessions.

The court agrees with Lancaster's analysis, as the Legislature would not have specified that section 54954(b) applies to closed sessions if it intended it to apply to open sessions as well. As Lancaster argues, closed sessions require greater disclosure because the public can come to open sessions and determine what is being said, whereas it cannot attend closed sessions.

Based on the foregoing, the court finds that Lancaster substantially complied with the requirements concerning the agenda and did not violate the Brown Act in connection with the agenda or in connection with its actions on August 10, 2010. Therefore, its resolutions and resulting agreements are not void due to Brown Act violations.

The Issue of Prejudice to Palmdale

There is an alternative ground for the court's finding that the actions Lancaster took pursuant to the August 10, 2010 meeting were not void for failure to comply with the Brown Act.

An action taken in violation of the Brown Act is only void if the party alleging the violation can show it was prejudiced by that violation – mere technical violations are insufficient.

Palmdale was not individually prejudiced by any alleged failure to substantially comply with any requirement to include on the agenda the accurate assessor's parcel numbers. It was not prejudiced because it knew what parcels were at issue and had ample notice and an adequate opportunity to be heard on this topic. (See, e.g. Bozigian Decl. paras. 17 – 18) Therefore, even if there was no substantial compliance and there was a violation, the actions taken August 10, 2010 were not void when challenged by Palmdale.

Analysis As To The Fifth Cause Of Action

The fifth cause of action is for a writ relating to the alleged Brown Act violations. As there were none, the writ will be denied.

SO ORDERED

2/2/12

Rita Miller, Judge