

CDIAC

**CALIFORNIA
DEBT AND
INVESTMENT
ADVISORY
COMMISSION**

**SESSION TWO:
RECENT APPELLATE COURT
DECISIONS AND WHAT THEY
MEAN TO ASSESSMENT
DISTRICTS**

The New Normal



HJTA v. City of Riverside (1999)



- Pre-Proposition 218 1972 Act Assessment need not comply with Article XIII D, § 4 until increased
- Streetlights are streets within the meaning of Article XIII D, § 5

Silicon Valley Taxpayers' Association v. Santa Clara Open Space Authority (2008)



- 1994 - Santa Clara Open Space Authority (“OSA”) forms assessment district for acquisition and maintenance of open space

Background

- 2000 – OSA needed additional funding for open space acquisition and maintenance
- OSA initiated proceedings to form a new assessment district for open space
- Assessment for all single-family residences in county set at same rate – assessment revenues will produce ~ \$8 million

Background

- No parcels are identified in the report for open space acquisition
- Majority of property owners approve assessments
- Taxpayers Association challenges assessments, claims assessments:
 - ▣ Fail to satisfy special benefit requirements
 - ▣ Fail to meet proportionality requirements

Standard of Review – Pre-Prop 218

Deferential standard of review – A special assessment will not be set aside unless it clearly appears on the face of the record before the legislative body, or from facts which may be judicially noticed, that the assessment is not proportional to the benefits to be bestowed on the properties to be assessed or that no benefits will accrue to such properties.

Standard of Review – Pre-Prop 218



- Assessments are presumed valid
- Burden is on the challenger
- Prop 218 targets deferential standard of review

Standard of Review – Post-Prop 218

- Validity of assessments has become a constitutional question
- Courts are responsible for enforcing the provisions of the Constitution
- Independent Judgment Standard of Review - Courts must exercise their independent judgment
- Burden is on the agency

Special Benefit

Court refines the meaning of special benefit:

“[A] special benefit must affect the assessed property in a way that is particular and distinct from its effect on other parcels and that real property in general and the public at large do not share.”

Special Benefit

- “Special benefits” identified in Engineer’s Report:
 - ▣ Enhanced recreational activities and expanded access to recreational areas;
 - ▣ Protection of views, scenery, other resources;
 - ▣ Increased economic activity;
 - ▣ Reduced costs of law enforcement, health care, fire prevention, natural disaster response;
 - ▣ Enhanced quality of life and desirability of area;
 - ▣ Improved water quality, pollution reduction and flood prevention; and
 - ▣ Enhanced property values

Special Benefit

- All of the listed benefits are general benefits shared by everyone
- Report fails to recognize that the “public at large” means all members of the public, not just transient visitors



Special Benefit

- Report fails to show any distinct benefits to parcels



Proportionality

- Report fails the proportionality requirements of Article XIII D, section 4(a):
 - ▣ Failed to identify any permanent public improvements to be financed with the assessments



Proportionality



- ❑ Failed to estimate or calculate the cost of any of the proposed improvements
- ❑ Failed to directly connect any proportionate costs of the benefits to the specific assessed parcels

Town of Tiburon v. Bonander (2009)

- Case decided after *Silicon Valley*, provided further clarification of special benefit and proportionality
- Court exercised its independent judgment
- Special benefits were invalid because:
 - They were allocated among three zones based on cost considerations rather than proportional special benefit
 - Properties paid for special benefits conferred on other parcels

Background

- After forming assessment the project costs were more than originally projected
- Supplemental assessment was necessary to cover the shortfall



Background

- Engineer's report identified 3 special benefits:
 - ▣ Improved aesthetics
 - ▣ Increased safety
 - ▣ Improved service reliability



Special Benefits

- Properties did receive special benefits from the improvements
- Aesthetics special benefits equally assigned to all properties was appropriate
- Almost every assessment that confers a particular and distinct advantage on a parcel will also enhance its property value

Proportionality

- Benefit zones were not based on differential benefits enjoyed within each zone, but were largely based on variances in the costs of undergrounding utilities in each zone
- Apportionment resulted in properties that received identical benefits paying vastly different assessments
- Apportionment is a function of the total cost of the project

Proportionality

- Properties that receive special benefit may not be excluded from the district
- By excluding properties that receive special benefit, the assessments on other properties necessarily exceeded the proportionate special benefit conferred on them



Dahms v. Downtown Pomona PBID



- Services for PBID included security, streetscape, marketing, promotion, and special events
- Plaintiff claimed City failed to comply with procedural and substantive requirements of Article XIII D, §4.

Procedural Requirements

- Plaintiff argued that because the hearing took place on the 45th day, the City violated the procedural requirements of Article XIII B, § 4(b)
- Court finds that the City may hold the public hearing on the 45th day after the mailing of the notice of the public hearing

Substantive Requirements

- Assessment for non-profit entities were discounted
- Residential properties exempted from assessments
- Court held that Article XIII D, section 4(a) leaves local governments free to impose assessments that are less than the proportional special benefit conferred, so long as the discounts are not subsidized by other properties

Substantive Requirements

- Court held services provided special benefits because they are over and above those already provided by the City within the PBID
- Services are particular and distinct, and are provided only to properties within the PBID, not to the public at large
- Report separated the special benefits from those already provided by the City

Beutz v. County of Riverside (2010)

- Assessments challenged because residential properties assessed for the entire cost of refurbishing and maintaining parks
- Costs attributable to general benefits were not deducted – i.e., general benefits were not separated from the special benefits

Background

- County acquired 3 parks from a park district that could not afford to maintain them
- Park district dissolved and the County took over its assets and liabilities
- County formed assessment district to maintain the parks



Background

- Assessment engineer's report apportioned the costs equally among all single-family residential properties
- Report concluded all other properties within the district did not receive special benefits
- Report recognized parks provided general benefits, but they were offset by the County's expenditures related to the parks

Proportionality

- Court exercised its independent judgment
- Report failed to separate the general benefits from the special benefits
- Report failed to quantify the special and the general benefits

Concerned Citizens for Responsible Gov't v. W. Point Fire Protection Dist. (2011)



- Special assessment adopted by a fire protection district did not provide special benefit to property

Substantive Requirements

- Court also identified public park maintenance and library upkeep as examples of other services and facilities which provide only general benefit



Golden Hill Neighborhood Ass'n v. City of San Diego (2011)

- Assessments were challenged on the basis that they did not meet the proportionality requirements of Article XIII D, § 4(a)
- Assessment challenged on the basis of the failing to comply with the procedural requirements of Article XIII D, § 4(b)



Background

- Assessment calculated on the basis of two components: (1) each parcel's linear square footage; and (2) a single family equivalent benefit factor (SFE).
- No formula was provided for calculating assessments imposed on City park and open space land



Proportionality

“The City’s failure to publicly disclose how the assessments for the City’s park and open space properties were calculated compromised the transparency and integrity of the ballot protest process by depriving other property owners of the opportunity to review and challenge the ballot weighting for those properties.”

Elimination of City Ballots



- The court could not conclude that the ballots cast by the City were properly weighted under article XIII D, section 4
- With elimination of City's ballots, ballots in opposition prevailed

Conclusions and Recommendations

- Courts will exercise their independent judgment when reviewing the validity of assessments; burden is on the public agency to demonstrate compliance
- *Silicon Valley* decision calls into question validity of assessments imposed for broad, regional services and improvements which are determined to provide special benefit

Conclusions and Recommendations

- Public Agencies must separate and quantify the general benefits from the special benefits
- Public agencies must identify with sufficient specificity:
 - The services and/or improvements
 - The special benefits that parcels will receive
 - The cost of the services and/or improvements
 - The proportionate special benefits conferred on the identified assessed parcels

Conclusions and Recommendations

- *Silicon Valley* court found that enhancement of property value is not a special benefit
- *Town of Tiburon* court recognized that almost every assessment enhances property value



Conclusions and Recommendations

- Assessments should not be based on an amount the public is willing to pay
- Assessments should not be apportioned based on variances in the costs of the improvements
- Proposition 218 continues to evolve

QUESTIONS?

