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August 5, 2011

VIA FEDEX

Honorable Chief Justice Tani Cantil-Sakauye and
Honorable Associate Justices
California Supreme Court
350 McAllister Street
San Francisco, CA 94102-4712

Re: *Concerned Citizens for Responsible Government vs. West Point Fire Protection District*, Supreme Court Case No. S195152, Third District Court of Appeal Case No. C061110, 196 Cal.App.4th 1477 (decision filed June 29, 2011, request for depublication filed July 28, 2011)

Dear Chief Justice Cantil-Sakauye and Associate Justices:

I write on behalf of the California Downtown Association (CDA) to express our support for the request for depublication of the Third District Court of Appeals' decision in the Concerned Citizens case referenced above, pursuant to the California Rules of Court, rule 8.1125. CDA and its members are concerned about the impact this case may have on downtown districts and commercial corridors throughout the state.

We do not argue that the decision in this case was incorrect, but are concerned with overly broad language in the opinion related to assessment financing of property services. We fear the appellate court has reached too far in its description of general benefit from property related services. If permitted to remain published, this decision could undermine an array of property specific services currently provided with assessment funding, including the property-related safety, maintenance, and clean-up services many of our member business improvement districts have implemented with assessment funding. This decision also fails to take into account previous case law and provisions of Proposition 218. Accordingly, CDA respectfully urges this Court to grant the Request for Depublication.

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Amicus Interest

CDA is the state leader and champion for the revitalization of downtown business districts and commercial districts. It represents hundreds of small business and property owners throughout the state. The majority of CDA members are involved in business improvement districts (BIDs), most often property and business improvement districts (PBIDs) levied pursuant to the Property and Business Improvement District Law of 1994 (Streets and Highways Code sections 36600 et seq.). **PBIDs are designed by commercial property owners for the specific benefit of commercial properties.** These special benefit assessment districts have long provided a broad array of services which are now seriously threatened by this decision. Discontinuation of funding for those services would impact our member businesses and property owners currently receiving special benefits as a result of direct property related PBID services. This decision, were it to remain published, would have significant impact on CDA and its individual members.

PBIDs have been implemented to fund property related services over and above those local governments are able to provide. PBIDs create a special benefit for property owners paying the assessment by providing services directly to assesses that are provided only within the district boundaries. PBID services often include security, landscape maintenance, and capital improvement maintenance. These services are carefully designed and are relatively narrow in scope to ensure that they provide special benefits to the parcels within the district.

Assessment Financing is Appropriate for Property Related Services

Concerned Citizens involves a challenge to an assessment imposed to fund additional fire protection services within a distinct rural area. The assessment was supported by an Engineer's Report that allocated the assessment to parcels based on the benefit received by each parcel. The Court found that the fire protection services paid for with the assessment did not provide a special benefit to the assessed parcels. The Court's reasoning reached beyond the question of proportionality for this particular assessment and strayed into an opinion that assessments cannot be utilized to fund any type of services. The Court wrote:

Fire suppression, like bus transportation or police protection, is a classic example of a service that confers general benefits on the community as a whole. A fire endangers everyone in the region. No one knows where or when a fire will break out of the extent of the damage it may cause. Fire protection is a service supported by taxpayer dollars for the benefit of all those who reside in the entity's jurisdiction and those unlucky members of the public who may need it while temporarily within its borders. Such protection cannot be quantifiably pegged to a particular property, nor can one reasonably calculate the proportionate "special benefits" accruing to any given parcel. As the legislative analyst pointed out in the ballot materials that accompanied Proposition 218, "typical assessments that provide *general* benefits are fire, park, ambulance, and mosquito control

assessments.” Thus, the assessment generates only general benefits. (Slip Opinion, at p.9, citations omitted.)

While the above statements were unnecessarily broad, the most troubling portion of the opinion soon followed:

These levies go toward paying for specific tangible benefits of which each parcel partakes, and which can be apportioned in relationship to the total cost of the improvement. By contrast, fire protection, as well as public park maintenance and library upkeep, are supported by ad valorem property taxes, which “are deemed to benefit all property owners within the taxing district, whether or not they make use of or enjoy any direct benefit from such expenditures and improvements.” (Slip Opinion, at p.9, citations omitted.)

While Concerned Citizens respects the idea that capital improvements create a special benefit for assessed parcels, it fails to take into account that maintenance, security, and similar services are required for capital improvements to continue their function and provide a special benefit. Installation of tangible property is only one aspect of creating a special benefit; if improvements do not continue to receive services they risk becoming a detriment to the parcels. The Court reasoned that assessment financing was appropriate for infrastructure such as street improvements and lighting improvements. However, an unmaintained street improvement or unmaintained lighting improvement will not provide benefit to the parcels and will likely be injurious to the property owners. Were these services to lose assessment funding, the results would be immediate and severely detrimental to every community in California, especially the downtowns and commercial corridors that CDA represents.

In previous decisions, courts have recognized that special benefits are derived directly from services. In *Robert Dahms v. Downtown Pomona Property and Business Improvement District* (2009) 174 Cal. App.4th 708, the Court determined, “The special benefits conferred were not mere effects of the services funded by assessments. Rather, *the services themselves constituted special benefits to all of the assessed parcels*. The assessments directly funded security services, streetscape maintenance services, and marketing and promotion services for the assessed parcels” (emphasis added). The Dahms Court also noted, “It makes sense to use front footage rather than total street length to determine the proportional special benefit that a parcel will derive from the *services* of the PBID (e.g. increased security, litter removal, and graffiti removal). For example, a clean and safe front entrance to a commercial parcel is more likely to constitute a special benefit to that parcel than a clean and safe side or rear” (emphasis added). In its reasoning on proportionality, the Dahms Court repeatedly referred to services, including security, as a special benefit to assessed parcels.

Dahms, *supra*, also took into account previous cases which further support services as special benefits. Referring to *Silicon Valley Taxpayers Association v. Santa Clara County Open Space Authority* (2008) 44 Cal. 4th 431, wherein an assessment imposed to fund open space acquisition and maintenance was in question, the Dahms court stated, “SVTA in no way suggests that those

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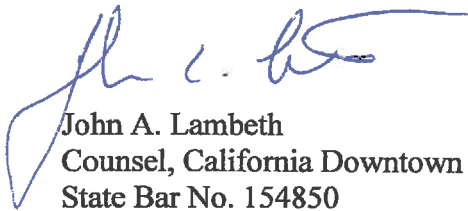
services are not special benefits.” (Emphasis added.) It is worth noting that the Court in Concerned Citizens did not even mention the Dahms case.

Special benefit being a derivative of services was also specifically identified in the text of Proposition 218, which states “the proportionate special benefit derived by each identified parcel shall be determined in relationship to the entirety of the capital cost of a public improvement, the maintenance and operation expenses of a public improvement, *or the cost of the property related service being provided.*” (Emphasis added.) Services as special benefit in and of themselves was confirmed by the Legislative Analyst in the Proposition 218 Ballot Pamphlet, which indicates, “local governments must estimate the amount of ‘special benefit’ landowners receive – or would receive – from a project *or service.*” (Emphasis added.) In its sweeping dismissal of services as a special benefit, we believe the Court in Concerned Citizens has failed to take into account both case law and the will of the people specifically expressed in Proposition 218.

Conclusion

For these reasons, the California Downtown Association and its members support the Request for Depublication and respectfully urge the Court to depublish the opinion. Thank you for your consideration of our request.

Sincerely,

A handwritten signature in blue ink, appearing to read "John A. Lambeth", with a long, sweeping horizontal flourish extending to the right.

John A. Lambeth
Counsel, California Downtown Association
State Bar No. 154850

1
2 PROOF OF SERVICE
CALIFORNIA SUPREME COURT

3 Case Name: Concerned Citizens v. West Point Fire District
4 Case Number: Third District Court of Appeal, C061110

5 I, MELANEE CARDOZA, declare as follows:

6 I am employed in the County of Sacramento. I am over the
7 age of 18 years and not a party to the within action. My
business address is 7700 College Town Drive, Suite 111,
Sacramento, CA 95826.

8 On August 6, 2011, I caused the following document to be
served:

9 AMICUS LETTER IN SUPPORT OF REQUEST FOR DEPUBLICATION

10 On the parties listed below by enclosing them in an
11 envelope and depositing the sealed envelope with the United
States Postal Service with the postage fully prepaid.

12 Richard P. Shanahan
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15 Robert K. Reeve
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16 Valley Springs, CA 95252

17 Stephanie J. Finelli
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18 Sacramento, CA 95814

19 Stephen Norvell Roberts
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21
22 I declare under penalty of perjury under the laws of the
23 State of California that the foregoing is true and
24 corrected. Executed on the 6th day of August, 2011 at
25 Sacramento, California.

26
27
28 _____
Melanee Cardoza, R.P.