

Props. 218 & Assessments

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Internal MCLE Presentation

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Assessment Defined

- 13D, §2(b) "Assessment" means any levy or charge upon real property by an agency for a special benefit conferred upon real property.
"Assessment" includes, but is not limited to, "special assessment," "benefit assessment," "maintenance assessment," and "special assessment tax."

Assessment Defined

- 13D, §2(b) excludes assessments that are not imposed on real property
 - HJTA v. San Diego (1999) 72 CA4th 280 (Business Improvement District collected as surcharge on business license taxes is not an assessment governed by Prop. 218)
 - Cf. Evans v. San Jose (1992) 3 CA4th 728 (similar assessment under charter city ordinance not a tax under Prop. 13)

Special Benefit Defined

- §2(i): “Special benefit” means a particular and distinct benefit over and above general benefits conferred on real property located in the district or to the public at large. General enhancement of property value does not constitute “special benefit.”

Assessment Procedures

- §4(a): Identify all benefited parcels
 - Determine proportionate special benefit derived by each parcel in relationship to entire capital cost of improvement, maintenance & operation cost, or the cost of the property related service
 - No assessment may exceed the reasonable cost of the proportional special benefit conferred

Assessment Procedures

- §4(a): Only special benefits assessable; agency must separate general from special benefits.
- Few case find no special benefit:
 - Saratoga v. Hinz (2004) 114 CA4th 1202 (acquiring land to convert private cul-de-sac into public street)
 - Tiburon v. Bonander (2009) 180 CA4th 1057 (undergrounding to enhance views of SF Bay)

Assessment Procedures

- Parcels owned by public agency
“shall not be exempt from assessment unless the agency can demonstrate by clear and convincing evidence that those publicly owned parcels in fact receive no special benefit.”

Assessment Procedures

- But 13D, §1(a): “Nothing in this article or [13C] shall be construed to: (a) provide any new authority to any agency to impose a tax, assessment fee or charge.”
- We are litigating this now in Reclamation District 501 v. CalTrans, Solano County.

Assessment Procedures

- §4(b): All assessments shall be supported by a detailed engineer's report prepared by a registered professional engineer"
- This is THE crucial document in the record of an assessment and legal review is essential.

Assessment Procedures

- §4(c): Ballot must be mailed to each property owner with notice listing:
 - Proposed assessment
 - Total of all assessments
 - Duration
 - Reason for the assessment (advisable to state this broadly)
 - Basis on which calculated
 - Date, time and place of hearing

Assessment Procedures

- §4(c): Notice must also include “summary of the procedures applicable to the completion, return, and tabulation of the ballots ... including a disclosure that the existence of a majority protest ... will result in the assessment not being imposed.”

Assessment Procedures

- §4(d): Notice must include ballot “which includes the agency’s address for receipt of the ballot once completed by any owner receiving the notice whereby the owner may indicate his or her name, reasonable identification of the parcel, and his or her support or opposition to the proposed assessment.”

Assessment Procedures

- §4(e): Hearing held at least 45 days after notice mailed. Agency must consider and tabulate all protests. Agency may not impose assessment if there is a majority protest.

Majority Protest Defined

- §4(e): “A majority protest exists if, upon the conclusion of the hearing, ballot submitted in opposition to the assessment exceed the ballots submitted in favor of the assessment. ... [T]he ballots shall be weighted according to the proportional financial obligation of affected property.”

Burden of Proof

- §4(f): "In any legal action contesting the validity of any assessment, the burden shall be on the agency to demonstrate that the properties in question receive a special benefit ... and that the amount of any contested assessment is proportional to, and no greater than, the benefits conferred on the property ... in question."

Burden of Proof

- Beutz v. County of Riverside (2010)
184 CA4th 1516:
 - No duty to exhaust administrative remedies as to special benefit and proportionality
 - No duty to plead these issues

Grandfathered Assessments

- §5: Assessments existing when Prop. 218 was adopted in November 1996 may continue without a majority protest proceeding until they are increased if they are in any of four favored classes.

Grandfathered Assessments

- §5:
 - Sidewalks, streets, sewers, water flood control, drainage systems or vector control
 - Imposed pursuant to petition of all assessees
 - Protected by the Contracts Clause (cf. Gov't Code 5854)
 - Imposed pursuant to voter approval

Prop. 218 Omnibus Implementation Act

- Elections Code § 4000; GC §53753(e)(6)
 - Majority protest proceedings are not elections
- Gov't Code §§ 53739 & 53750(h)
 - CPI provision or range of assessment amounts (i.e., stepped amounts over time) can be implemented w/o new protest proceeding
- Gov't Code § 53750 – definitions

Omnibus Act

- §53753(a): Omnibus Act supersedes provisions of assessment statutes re “notice, protest and hearing requirements.”
- Most statutes have been updated, but not all and this is an issue in the Solano case.

Omnibus Act

- §53753(b): Mandatory language for envelopes in which notices and ballots mailed.
- §53753(c): Envelopes must be opaque and ballots sealed until counted, at which point they become public records.

Omnibus Act

- §53753(d): Tally by impartial person and in public place if tallied by agency personnel or vendor who “participated in research, design, engineering, public education or promotion.”

Assessment Litigation

- HJTA v. City of Riverside (1999) 73 Cal.App.4th 679
 - Pre-218 '72 Act assessment need not comply w/ 218 until increased
 - Streetlights are "streets" w/in meaning of §5

Assessment Litigation

- Not About Water Comm. v. Bd. of Sups. (2002) 95 Cal.App.4th 982
 - Weighted voting on assessments does not violate due process or equal protection
 - Other aspects of decision overruled by Silicon Valley.

Assessment Litigation

- Silicon Valley Taxpayers Ass'n v. Sta. Clara Co. Open Space Auth. (2008)
 - Independent judicial review of findings of special benefit & proportionality
 - Struck down assessment b/c engineer's report failed to provide basis for conclusions re special benefit and proportionality

Assessment Litigation

- Dahms v. Downtown Pomona PBID (2009) 174 Cal.App.4th 708
 - Deferential review of PBID
 - Supplemental muni. services always provide special benefit
 - Gentle review of proportionality
- Town of Tiburon v. Bonander (2009) 180 Cal.App.4th 1057
 - Undergrounding=100% special benefit

Assessment Litigation

- Beutz v. Co. of Riverside (2010)
 - 100% assessment funding of M&O permitted b/c other funds used for capital
 - Agency always bears burden to prove special benefit and proportionality even when petitioner fails to exhaust administrative remedies on these issues

Assessment Litigation

- Golden Hill Neighborhood Ass'n v. City of San Diego (2011) 199 Cal.App.4th 416
 - Charter city assessment for supplemental services invalidated b/c record lacked support for voting power assigned to City properties
 - Helpful discussion of how to demonstrate proportionality

Assessment Litigation

- Concerned Citizens for Responsible Gov't v. West Point FPD, Cal. S. Ct. Case No. S195152
 - Do fire suppression services provide special benefit?
 - How demanding is Prop. 218 as to showing of special benefit and proportionality?
 - Fully briefed as of 3/15/12

Questions?