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Superior Court Upholds MRCA Open Space Assessment

by

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On March 20, 2003 the Los Angeles Superior Court upheld two open space assessments imposed by the Mountains Recreation and Conservation Authority to acquire open space resources in the Santa Monica Mountains and the Hollywood Hills. The decision is good news for those concerned about the power of local governments to use assessment financing for open space and other environmental programs.

Many local governments rely on special assessments to fund local government services. With the adoption in 1996 of Proposition 218, it has become much more difficult to do so and complex rules and procedures now apply.

It has always been true that a facility or service could be funded with assessments on property only if that facility or service is shown to confer some "special benefit" on the assessed property over and above the general benefit that effective, efficient local government services provide to property owners and others. Proposition 218 slightly redefined the "special benefit" required, stating that: "'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 values does not constitute 'special benefit."

A few cases have been decided since the adoption of Proposition 218 have provided some guidance on this issue, notably last year's *Not About Water Committee v. Solano County Board of Supervisors*, which held that fire hydrants provide special benefit to property sufficient to

support an assessment. In that case, the Sacramento Court of Appeal wrote that "the case law decided prior to the passage of Proposition 218, under which legislative-like determinations by public improvement agencies are reviewed under an abuse of discretion standard, continues to apply in the post-Proposition 218 environment." One of the more pressing questions to arise of late, especially given the torrid pace of housing development and the growing pressure on the state's open space resources has been this: do the acquisition, preservation and maintenance of open space resources confer "special benefit" on private property sufficient to support an assessment? Two cases are now pending which test this question: the MRCA case mentioned above and a similar case arising in Northern California.

The Northern California case is *Silicon Valley Taxpayers Ass'n v. Santa Clara County Open Space Authority* and is pending in Santa Clara County Superior Court. The Authority conducted a mailed-ballot protest proceeding on a proposed assessment to fund acquisition of open space lands. After the measure was approved by the property owners who cast ballots, taxpayer advocates sued, making two arguments: (i) open space does not confer special benefit on property sufficient to support an assessment under Proposition 218 but rather benefits the public generally; and (ii) the Authority's refusal to count assessment protest ballots which were not cast on the official protest forms mailed by the Authority was unlawful. Unfortunately for the Authority, had those contested ballots been counted, the assessment would have failed, thus making this issue crucial. Assessing authorities are well advised to adopt a "rules of the road" resolution at the outset of the assessment process spelling out how the protest proceeding will be conducted and addressing such issues as spoiled ballots, duplicate ballots, and whether unofficial protests will be counted. This case remains pending in the trial court.

The MRCA case is *Badtax v. Mountains Recreation and Conservation Authority*, which also arose from a successful mailed ballot proceeding to impose assessments to fund regional open space acquisitions. It, too, involved the Proposition 218 special benefit question and a procedural question, in this case whether the MRCA, a joint powers authority, has the power to impose an assessment under the 1972 Landscaping and Lighting Act on the basis that the power to do so was common to the agencies which created it. The Joint Exercise of Powers Act allows JPA entities to exercise only those powers which are both common to the agencies which form the JPA and specified in the JPA agreement. Judge Richard Adler in the Van Nuys courthouse decided both issues for the MRCA, concluding that the MRCA had met its burden to prove the

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existence of special benefit and noting that "the legislative determination of the lands benefited, and the amount of the benefit to each landowner, will be upheld unless plainly arbitrary." For this, the court cited a well-know summary of California law and a long line of state and federal assessment cases.

The Badtax case is likely to be appealed, as is the Silicon Valley Taxpayers Ass'n case when it is decided. Those appeals will most likely draw *amicus curiae* ("friend of the court") support from the League of California Cities and other local government organizations. When decided, those appeals may well produce published decisions which can be cited as precedent in future cases. For the moment, whether open space acquisition confers special benefit sufficient to allow assessment financing is an open question. However, the early rounds of the fight have gone to the assessing agencies.

The law of public finance grows increasingly complex and new developments arise regularly. Through it all, we'll keep you posted.

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