

Non-Capital Expenses May Not Qualify as a “Special Benefit” Under Prop 218

by Joseph M. Quinn and Julie A. Sherman



Hanson Bridgett Public Agency Practice Group

HANSONBRIDGETT.COM

The California Court of Appeal recently published a Proposition 218 (Prop 218) opinion that should be read and understood by any agency official considering a special assessment, currently administering an assessment district, or currently defending an assessment in court. *Concerned Citizens for Responsible Government v. West Point Fire Protection District* (June 29, 2011, C061110) __ Cal.App.4th __ [11. C.D.O.S. 8121], involves a “special assessment” imposed to fund additional fire suppression services. The District commissioned an engineer’s report that characterized all additional services as “special benefits,” divided all properties into one of three categories (improved parcels, unimproved parcels and exempt parcels) and allocated the assessments such that improved parcels were assessed at approximately twice the amount as unimproved parcels regardless of size, type of use, topography or any other characteristic. A citizens’ group challenged the assessment, claiming it violated Prop 218’s “special benefit” and proportionality requirements. The trial court rejected the challenge, concluding that the assessment was valid.

The Sacramento-based Third District Court of Appeal reversed. The court’s special benefit analysis is noteworthy. First, and perhaps not surprisingly, the court noted that general fire suppression services do not constitute special benefits under Prop 218. The court concluded that the nature of the benefit essentially meant that the charge amounted to a special tax. Secondly, and notably, the court held that only capital improvements (e.g. street, lighting, and sewer improvements), as opposed to non-capital improvements (e.g. fire protection, park maintenance and library upkeep), could qualify as special benefits. The holding, which would likely make it difficult or impossible for an agency to establish certain kinds of assessment districts, such as local improvement districts, is in apparent conflict with *Dahms v. Downtown Pomona Property & usiness Improvement Dist.* (2009) 174 Cal. App.4th 708. In *Dahms*, the Los Angeles-based Second District Court of Appeal held that non-capital expenses, such as security services, street maintenance, and marketing services, qualified as special benefits under Prop 218.

The court's analysis of the proportionality requirement is less remarkable. The court explained that the assessment lacked proportionality because: (1) the methodology used by the engineer was cost-driven, rather than benefit-driven, in as much as the engineer worked backwards from the total cost of the services, rather than the value of the special benefit; (2) general benefits conferred on affected parcels were not subtracted from the assessment; and (3) the categories of properties identified by the engineer were arbitrary and resulted in gross inequities. The court's proportionality analysis is largely in line with existing case law, including the San Francisco-based First District Court of Appeal's decision in *Town of Tiburon v. Bonander* (2009) 180 Cal.App.4th 1057.

In light of this opinion, officials considering, or dealing with, a special assessment should:

1. Analyze Prop 218, the Prop 218 Omnibus Implementation Act and relevant case law before taking any action on a special assessment and be meticulous in applying the special benefit and proportionality requirements.
2. Prepare a solid engineer's report that includes a reasoned, defensible method for allocating the special benefits, that does not work backwards from cost to calculate special benefits, and that excludes from the assessment all sums attributable to general benefits.
3. Consider advocating for depublication or, if appropriate, review of the opinion, or, at least, the special benefits analysis. Any interested agency can seek depublication by filing a letter with the California Supreme Court within 30 days after the case is final in the Court of Appeal, meaning that all letters requesting depublication should be filed by July 28, 2011. If the West Point Fire Protection District seeks review in the California Supreme Court, then any agency may file a letter supporting the Fire District's petition. The Fire District has until approximately August 7, 2011 to petition for review. Letters supporting review may be filed any time after the petition for review is filed and it is advisable to file such letters no later than a month after the petition for review is filed. Any agency interested in advocating for depublication or review should consult the California Rules of Court for more information.

For more information, please contact:



Joseph M. Quinn
Partner
 415-995-5108
 jqinn@hansonbridgett.com



Julie A. Sherman
Associate
 415-995-5185
 jsherman@hansonbridgett.com

SAN FRANCISCO

425 Market Street, 26th floor
 San Francisco, CA 94105
 TEL 415-777-3200
 FAX 415-541-9366

NORTH BAY

Wood Island
 80 E. Sir Francis Drake Blvd, Ste. 3E
 Larkspur, CA 94939
 TEL 415-925-8400
 TEL 707-546-9000
 FAX 415-925-8409

SACRAMENTO

500 Capitol Mall, Ste. 1500
 Sacramento, CA 95814
 TEL 916-442-3333
 FAX 916-442-2348

SILICON VALLEY

950 Tower Lane, Ste. 925
 Foster City, CA 94404
 TEL 650-349-4440
 FAX 650-349-4443