

Legal Brief

CALIFORNIA SUPREME COURT CHANGES PROP 218 LANDSCAPE - ASSESSMENTS WILL BE HARDER TO ENACT

Source: *Nossaman, LLP*

A California Supreme Court decision changed the way special assessments can be levied and challenged. Special assessments that are applied evenly to all parcels within a district now run a high risk of being viewed as special taxes requiring a two-thirds vote, and any assessment challenged in court will now be subject to independent judicial review. The decision will likely have far-reaching implications for local governments and special districts that depend on special assessment funding.

The unanimous decision, *Silicon Valley Taxpayers Association Inc. ("SVTA") v. Santa Clara County Open Space Authority ("Silicon Valley")*, was handed down on July 14, 2008 and clarified the standard of judicial review for assessments, and held that any assessment will be reviewed de novo by a court. Further, it revised the substantive law underlying assessments, by, among other things, rejecting traditional methods of apportioning assessments and making it clear that any benefits that accrue to all properties within the special benefit assessment district are no longer considered "special benefits" unless the engineer's report shows that the particular benefit accrues to particularized parcels.

The Santa Clara County Open Space Authority ("OSA") was created in 1992 to acquire and preserve open space within the county. Although the act that created the OSA did not provide any particular method to fund such acquisitions, the act authorizes the OSA to levy special assessments under the Street and Highways Code. Pursuant to that authority, the OSA imposed its first countywide assessment to fund a program to acquire, improve and maintain unspeci-

fied open space lands in the County of Santa Clara in 1994.

After the original OSA assessment was created, Proposition 218, a voter initiative amending the California Constitution, passed in 1996. Among other things, Proposition 218 dictates that, before a local agency levies an assessment, the agency must follow certain procedural steps concerning notice to all property owners and balloting. In addition Proposition 218 also imposes substantive requirements for assessments, including that each assessment be imposed only for a "special benefit" conferred on particular property, and that the assessment imposed on any given parcel be in proportion to the special benefit conferred on each parcel.

In 2001, the OSA determined that it needed additional funding to purchase open space. As a first step, the OSA Board of Directors...authorized a poll of Santa Clara Valley property owners to determine whether they would support an assessment to fund these endeavors. The poll showed that a majority of property owners would support an additional assessment of up to \$20. Using the figure of \$20 as a starting point, the OSA then hired a consulting group to prepare the required engineer's report.

The engineer's report is the cornerstone of any post-Proposition 218 assessment. The report here "stated that the assessment would fund the '[a]cquisition, installation, maintenance, and servicing' of open space lands for recreation, conservation, watersheds, easements and similar purposes. Although the . . . report identified areas OSA was considering

for potential acquisition and improvement and outlined general considerations OSA would use to identify and acquire open space lands, it identified no particular parcels to be acquired and no particular areas to be prioritized." (Slip Op. at p. 4.) Further, it used this \$20 as a starting point for the assessment, setting the assessment rate for single family homes at \$20 per year, and used the \$20 single family home assessment unit as the basis for the rates imposed on other parcels. It then identified benefits that accrued to each parcel, as well as a formula for estimating the proportionate special benefit that other property on the tax rolls would receive. Using the \$20 property tax increase per single-family home, the engineer's report calculated that the assessment would produce an approximately \$8 million increase in OSA's budget.

Following a noticed balloting procedure, the assessment passed by more than 50 percent; the report was adopted by the OSA's Board, and the assessment was enacted. Thereafter, the OSA Board renewed the assessment for 2003-2004 and added a cost of living increase.

Plaintiffs, taxpayers advocacy groups and individuals, challenged the assessment via a writ of mandate on the grounds that it failed to comply with the procedural and substantive requirements set forth in Proposition 218 and its implementing legislation. Ultimately, the Court agreed with the plaintiffs, and invalidated the assessment and the engineer's report supporting it. But first, the Court considered the standard of review a court should apply to an assessment in the post-Proposition 218 world.