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Assessments: California Supreme Court Raises the Bar in *Silicon Valley Taxpayers* Case

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In a recent decision, the California Supreme Court holds that Proposition 218 requires courts to exercise independent judgment regarding the validity of assessments, and places the burden of proof on the assessing agency.

The California Supreme Court declared, in *Silicon Valley Taxpayers Ass'n v. Santa Clara County Open Space Authority,*[1] that Proposition 218 "changed the lawgoverning assessments" in a unanimous decision issued on July 14, 2008, and applied the "new law" to invalidate assessments levied by a special district to fund the acquisition of unspecied "open space."

The opinion lays out the new rules for the establishment, and judicial review, of assessments under the new substantive and procedural standards mandated by Proposition 218. Since these new requirements were added to the California state constitution,[2] the court explained that the determination of the validity of an assessment "is now a constitutional question" subject to a more rigorous "independent judgment" standard of judicial review. The court held that Prop. 218 shifted the burden of proof to the assessing agency. Then, applying its "independent judgment," the court found the agency had not met its burden of proof and these open space assessments were fatally deficient in at least two respects: (a) the assessments did not meet the new requirements that they be limited to "special benefits" enjoyed by the assessed properties; and (b) the assessments did not meet the new requirements that the amounts assessed to parcels be "proportional" to the special benefits conferred on the assessed properties.

Proposition 218's History

The court's opinion traced the history leading to passage of Proposition 218 in November 1996, and the significance of this initiative as an attempt to prevent governmental subversions of the tax and revenueraising limitations of 1978's Proposition 13 (previously explained in other opinions, *e.g., Apartment Ass'n of Los Angeles County v. City of Los Angeles*.[3] In its new Silicon Valley Taxpayers decision, the court noted that Proposition 218 had apparently been inspired, at least in part, by its 1992 decision that had applied a "deferential" standard of review to affirm the validity of a local park maintenance assessment even though some of the assessed parcels were 27 miles from the parks. The court's 1992 decision had applied the traditional standard of review, which presumed that legislative approval of assessments was valid and put the burden on the challenger to show that the record "clearly" did not support the underlying determinations of benefit and proportionality. That decision rejected arguments that the burden of proof should be on the government to demonstrate the validity of the assessments, as in the case of challenges to development fees, and found no basis for changing the traditional burden of proof and deference to assessments as legislative enactments.

Now, however, as the court emphasized, Art. XIII D, sec. 4, of the California Constitution specifically places the burden of proof on the government to demonstrate that (1) the assessed property receives a "special benefit" over and above the benefits conferred on the public at large; and (2) the amount of the assessment is "proportional to, and no greater than, the benefits conferred" on the assessed properties. The court concluded that these provisions not only impose new substantive burdens of proof on agencies seeking to impose assessments, but also require a new, lessdeferential standard of judicial review. "Because Proposition 218's underlying purpose was to limit government's power to exact revenue and to curtail the deference that had been traditionally accorded legislative enactments on fees, assessments, and charges, a more rigorous standard of review is warranted." The court explained that Proposition 218 had made assessments, and the limitations thereon, a matter of constitutional import, and that judicial deference to statutory assessments based on "separation of powers" notions was no longer appropriate. Instead, the court declared that the determination of the validity of assessments is subject to a court's "independent judgment." The "independent judgment" standard of review is ordinarily reserved for governmental action deemed to affect "fundamental vested rights" requiring more rigorous judicial review. The court expressly rejected the more common "substantial evidence" standard of review typically applied for most local government decisions, as being "too deferential" to satisfy the constitutional mandate.

The Open Space Authority's Assessment

The assessment which was the target of this litigation had been imposed by the Santa Clara County Open Space Authority, which in-

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cluded nearly all of Santa Clara County (over 800 square miles and 1.2 million residents). The Authority conducted a poll which reported that 55 percent of the respondents would be willing to pay up to $20 per year for unspecified "open space" acquisitions. The Authority then approved a report stating that "special benefits" would accrue to the assessed properties (all of the nearly 400,000 parcels in the district) and set an assessment at—surprise!—$20 per year for each single family home. 15 percent of the mailed ballots were returned and produced a narrow majority (50.9 percent) in favor of the assessment. The plaintiff taxpayers association challenged the assessments on procedural grounds as well as substantive grounds under Proposition 218. The trial court granted summary adjudication in favor of the government. The Sixth Appellate District affirmed, in a 2-1 vote, with Justice Bamattre-Manoukian dissenting. The Supreme Court cited her dissent at several points, found the assessments to be invalid "for failing to meet the requirements of Proposition 218" and reversed the appellate court decision.

The court's opinion provides a template for judicial review of such assessments:

> (1) First, the assessing agency must separate the general benefits of the program to be funded with the proposed assessments from the "special benefits" ostensibly conferred on the parcel(s) subjected to the assessment. "Only special benefits are assessable." The court pointed out that Proposition 218 "made several changes to the definition of 'special benefits.'" Formerly, case law did not demand a strict distinction between "special" and "general" benefits. No more. Under Art. XIII D, sec. 2, a special benefit must affect the assessed parcel "in a way that is particular and distinct from its effect on other parcels" which is not shared by other property or the public at large. The court held that the Authority here had failed to do so, and failed to adequately describe or distinguish any "general benefits" from the ostensible special benefits that would accrue from the assessments to acquire open space somewhere in the territory of the Authority. The court pointed out that the Authority had never identified any specific "open space" to be acquired or improved with the proceeds of the assessments, and therefore could not show any "special benefits" to the assessed parcels based on their direct relationship to the 'locality of the improvement' as required by Proposition 218.
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> (2) Second, the agency seeking to impose assessments must demonstrate that the amount of the proposed assessment would be proportional to the benefits anticipated to be conferred on the parcels paying the assessments. Once again, the court held that the Authority had made no attempt to "apportion" the special benefits of proposed (but vague) future acquisitions of unidentified open space to particular parcels or areas paying the assessments, as required by Prop 218. The court pointed out that the Authority's defective assessment failed to identify with suffcient specificity the "permanent public improvement" that the assessment would finance, failed to estimate or calculated the cost of any such improvement, and failed to directly connect any proportionate costs or benefits from the improvement to the specific assessed properties. In addition, the court criticized the Authority's cart-before-the-horse approach to its justification for the proposed assessment program: "An assessment that works backward by starting with an amount taxpayers are likely to pay and then determines an annual spending budget based thereon does not comply with the law governing assessments. . . .;"

Impact of Ruling

This new decision will likely trigger immediate review of other local assessments and fees that may suffer from similar deficiencies. Its careful analysis of the specific requirements of Proposition 218 provides guidance to local agencies considering the funding of public programs or facilities by means of assessments. In particular, the decision highlights the new importance of more clearly distinguishing special benefits, which may be funded through assessments, from more general benefits shared by the community at large. Assessments: California Supreme Court Raises the Bar in Silicon Valley Taxpayers Case

The court's explicit acknowledgement that Proposition 218 has shifted the burden of proof to the agency seeking to justify its assessments clarifies and resolves some unsettled issues that had emerged from previous inconsistent lower court rulings. In addition, the court's holding that assessments will be subjected to more stringent judicial review may result in more detailed assessment engineer's reports, including more evidence and analysis of anticipated "special benefits" and rationalization for proposed allocations of program costs through proportionality analysis. The court's unanimous decision repeatedly cited to the voter sentiment and concern over the creeping expansion of taxes, fees, assessments and other charges without voter consent that led to the passage Proposition 218. The court's rejection of these assessments may serve as a reminder that it is now essential that agencies carefully heed the constitutional mandates for better justification for such assessments, fees, special taxes and similar exactions, and a possible admonition to other agencies, which may occasionally be tempted to "work backwards" by figuring out how to spend the proceeds of assessments or fees only after first seeing how much revenue they might raise from the tax or fee payers.

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1 *Silicon Valley Taxpayers Ass'n, Inc. v. Santa Clara County Open Space Authority*, 2008 WL 2717789 (Cal. July 14, 2008).

2 Articles XIII C and D.

3 *Apartment Ass'n of Los Angeles County, Inc. v. City of Los Angeles*, 24 Cal. 4th 830 (Cal. 2001).