WHITE PAPER

Are Your Maintenance Assessment Districts At Risk

5 Questions to ask your assessment engineer

Based upon several recent appellate court decisions, it is important that agencies review their current maintenance assessment districts to understand what impacts those rulings may have on existing districts, as well as any new maintenance assessment districts being considered.

Under Proposition 218, the assessment engineer is responsible for making a number of findings as part of the engineer's report. This includes identifying which parcels will receive a special benefit from the improvements or services to be funded by the assessment, determining the proportionality of the special benefit amongst the parcels, and making certain the assessment levied upon a parcel is not greater than the costs of the special benefit received.

These recent court decisions have provided clearer direction on what is required to document the finding of special benefit and the other requirements contained in Proposition 218, including the need to have an engineer's report that thoroughly addresses each of the requirements contained in Proposition 218. To determine if your maintenance assessment districts are in compliance with the requirements of Proposition 218 based on these recent rulings, here are a few questions you should ask your assessment engineer.

1. Have you clearly separated special and general benefit and quantified the two types of benefit?

Section 4 of Article XIIID of Proposition 218 states that "only special benefits are assessable and an agency shall separate the general benefits from the special benefits conferred on a parcel." Proposition 218 also defined "special benefit" as 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."

In both the Golden Hills Neighborhood Association, Inc. v. City of San Diego and the Buetz v. County of Riverside cases, the courts found the assessment engineer, as part of

the Engineer's Report, did not adequately quantify the special and general benefits to be received by parcels. Although the engineer's report for both of these assessments contained language acknowledging there was some level of general benefit and both districts included contributions to "offset" the general benefit, the court ruled the engineer's report in both cases did not adequately separate and quantify the special and general benefits.

To meet this requirement, the assessment engineer should include as part of the Engineer's Report a specific methodology or basis for quantifying the general benefit provided. For example, the number of park users from outside the City versus park users that live within the City, or the number of vehicle trips that are "pass-thru" trips versus trips with an origin/destination within the City may be methods of quantifying the amount of general benefit. The specific methodology will be determined by the type of assessment district and the information available. What is important, however, is that the assessment engineer includes as part of the Engineer's Report some method for quantifying the general benefit element so it can be separated and to show that the costs associated with the general benefit have not been included in the assessment.

2. Does your assessment methodology calculate the assessment for each parcel such that it is proportional to the special benefit received by the parcel?

One of the primary requirements of the engineer's report is to clearly document the special benefit that will be received by parcels, and to establish the methodology for apportioning the special benefit to the parcels within the district. For example, if the assessment is for park maintenance, does the description of the special benefit to be received show that all single family homes receive the same special benefit regardless of their distance from a park, or is the special benefit proportional to the distance from the park? If the assessment is for the extension of a street, will all parcels that front on the street receive the same special benefit, or does the special benefit differ based upon the size of the parcel, lot frontage or land use? There is no simple answer to those types of questions, and it is the assessment engineer's responsibility to determine the methodology for proportioning the special benefit to the different types of parcels within the assessment district.

In many assessment districts, the assessment engineer has used an assessment methodology based upon EDUs (equivalent dwelling units), which is used to equate different land use categories, and the typical single family residential parcel is assigned 1.0 EDU. For example, if the average residential density in a community is eight single family residential units per acre, the assessment engineer may have assigned EDUs to commercial parcels at the rate of eight EDUs/acre, and vacant parcels may be assigned 1.0 EDU/acre. The assessment rate is then calculated by calculating the total number of EDUs and then dividing the budget by the total number of EDUs.

While the assignment of EDUs may be a reasonable methodology to convert different land uses to a common unit of measure, it probably does not accurately reflect the proportional special benefit received by parcels with different land uses.

3. If there are benefit zones, have you clearly documented the differences in the special benefit received by parcels in each of the different benefit zones?

Most of the assessments acts contain language that allows for the establishment of "zones of benefit." For example, Section 22574 of the Landscaping and Lighting Act of 1972 states that the assessment engineer "may classify various areas within an assessment district into different zones where, by reason of variations in the nature, location and extent of the improvements,

the various areas will receive substantially differing degrees of benefit from the improvements." The result is that many existing landscape maintenance districts have a zone of benefit for each new development that occurred. Each benefit zone had its own maintenance budget based on the costs of maintaining the landscape improvement within the zone, and the assessment rate for each zone was calculated by dividing the budget for that zone by the number of EDUs or benefit units (BU) within the zone. There are probably hundreds of existing assessment districts throughout the State were this occurs.

However, Section 22574 also states, "…a zone shall consist of all territory which will receive substantially the same degree of benefit from the improvements." In the Town of Tiburon v. Bonander, the courts found the assessment methodology documented the special benefit received by parcels from the undergrounding of the existing overhead utilities,

and the assessment methodology assigned BUs to parcels based upon several factors to determine the proportional special benefit received by each parcel. However, because of significant difference in the cost of undergrounding the existing utilities in several areas, the district was divided into three benefit zones and the assessments were calculated by dividing the costs of undergrounding within each zone by the total BUs within each zone.

In this case the court determined the method of apportioning the costs to parcels did not meet the proportionality requirement of Proposition 218 because the assessment was largely based upon cost considerations, because there were parcels that received the same level of special benefit based upon the fact that they were assigned the same number of Benefit Units even though they were in different benefit zones, but had different assessments.

If your assessment district has benefit zones, it is very important the assessment engineer clearly identifies the differences in special benefit received by parcels dependent upon which benefit zone they are in, rather than on the basis of differences in the costs of providing services between zones.

4. Have you assessed every parcel that receives a special benefit from the improvements or services being funded?

Proposition 218, which added Article XIII D to the State Constitution, requires "an agency which proposes to levy an assessment shall identify all parcels which will have a special benefit conferred upon them." This concept is certainly not new. It is the foundation for benefit assessments which are based upon the premise that general governmental revenues should not be used to pay for improvements or services that benefit a limited number of parcels, and those who receive a special benefit should not be subsidized by the general public. However, several of the recent court decisions have provided further clarification on what the assessment engineer must do to exempt parcels from assessment.

In Buetz v. County of Riverside the assessment engineer excluded all commercial and industrial parcels, vacant land and all publically owned parcels. The appellate court found the engineer's report did not contain clear and convincing evidence that those parcels would not receive a special benefit and, because all of the costs were assigned to the residential parcels, the assessment was not proportional to the special benefit received.

The appellate court made a similar finding in Town of Tiburon v. Bonander because the assessment engineer's report excluded several parcels even though it acknowledged they received a special benefit, although it was greatly reduced from the benefit received by the other parcels that were being assessed. Here again, the courts determined the assessments were not proportional to the special benefit received because the value of the special benefit received by those parcels that were exempted was being subsidized by the other parcels.

While it is clear that any parcel that receives a special benefit must have its proportionate share of the assessment allocated to it, it does not need to receive an assessment so long as the value of the special benefit is deducted from the assessment to be levied on the remaining parcels. This approach can be used, for example, if an agency does not want to levy an assessment on publicly owned parcels, such as school district parcels for example, if the assessment attributable to those properties can be paid from other funds.

An example of this can be found in Dahms v. Downtown Pomona Property and Business Improvement District, where the City allocated an assessment to a church property within the boundaries of the assessment district, but made a contribution from other sources to lower the assessment on church property. The ruling stated the assessment had been appropriately applied to the church property and the City had the discretion to reduce the assessment from funds outside the assessment district. This demonstrated that the amount of the reduction was not born by the other properties within the assessment district, in compliance with Proposition 218.

5. How do these rulings apply to my existing assessment districts?

Assessment districts created prior to November 6, 1996, that meet the specific exemption criteria of Proposition 218, are not subject to the requirements of Proposition 218. Any assessment district created after November 6, 1996, is potentially at risk if it does not comply with the requirements of Proposition 218.

You may believe that because your assessment district was approved by a majority of the property owners by mailed ballot, you have satisfied the requirements of Proposition 218. However, these rulings have shown that an assessment district that has not complied with the requirements of Proposition 218 is constitutionally flawed and any approval by property owner mailed ballot election on a constitutionally flawed assessment district is invalid. The exception to this may be an assessment district that has issued bonded indebtedness, where the repayment of the bonds is protected by federal law.

Many existing assessment districts may not meet the more detailed requirements these court rulings have created. With the annual renewal process fast approaching for operation and maintenance assessment districts, now may be the time to have your assessment engineer review the new requirements to determine if the Engineer's Report is sufficiently detailed to comply with these rulings. The following questions should be answered:

- Is there a detailed description of general and special benefits?
- Has any general benefit been quantified?

- Are benefit zones based on different benefits and not solely cost?
- Is the degree of special benefit based on proximity to the improvement or other factors, if any?
- Are all costs included in the benefit analysis?
- Has the assessment methodology been applied consistently?

As stated by the California Supreme Court in Silicon Valley Taxpayers Association v. Santa Clara County Open Space Authority, "An assessment calculation 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 law governing assessments, either before or after Proposition 218."

Summary

The key lesson to be learned from a review of the recent court rulings is the importance of having a detailed assessment engineer's report that clearly documents each of the findings required to show the parcels to be assessed receive a special benefit, the assessment is proportional to the special benefit received, and all parcels that will receive a special benefit have been identified.

While there can be no guarantee a property owner will not challenge an assessment levied on their parcel, by asking your assessment engineer these questions and making certain each of these issues is documented in the engineer's report, it will reduce the risk and provide a detailed record of the analysis, justifications and findings used to establish the assessments.

Court Case References

- Silicon Valley Taxpayers Association, Inc. v. Santa Clara County Open Space Authority in the Supreme Court of California, Case No. S136468, filed 7/14/2008
- Robert Dahms v. Downtown Pomona Property and Business Improvement District in the Court of Appeal, Second Appellate District, Division One, Case No. B183545, filed 5/12/2009
- Town of Tiburon v. Jimmie D. Bonander in the Court of Appeal, First Appellate District, Division One, Case No. A119918, filed 12/31/2009
- Steven Beutz v. County of Riverside in the Court of Appeal, Fourth Appellate District, Division Two, Case No. E046318, filed 5/26/2010
- Concerned Citizens For Responsible Government v. West Point Fire Protection District in the Court of Appeal, Third Appellate District, Case No. C061110, filed 6/29/2011
- Golden Hill Neighborhood Assn., Inc. v. City of San Diego, Fourth Appellate District, Division One, Case No. D057004, filed 9/22/2011

About the Author

Building rapport with clients is one of Alison's specialties. She has worked at Harris for most of her 20 years in the industry, so it's no surprise that Alison has developed long-term relationships that have benefited communities across California.

As a Vice President in the municipal funding and special district finance practices, Alison is an expert in the intricacies of AB1600 requirements and has been an integral player in guiding new developments through the specific plan, EIR, and finance plan process. She's also skilled at acquisition audits—ensuring that public agencies understand the legal aspects of reimbursing developers for constructing public infrastructure. This understanding is essential when precious public funds are involved.

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