

LAW REVIEW

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OPEN SPACE ASSESSMENT RULED ILLEGAL

In a unanimous decision, the California Supreme Court decided a key case under Prop 218, "The Taxpayers Right to Vote Act" approved by voters in 1996. Gotta love those titles. The Supreme Court struck down an open space assessment of \$20 a year on single family residences. The case changes the landscape for public entity assessment financing in California.

Open Space Assessment

The Santa Clara County Open Space Authority imposed an assessment to fund future, regional, open space acquisitions throughout the district, which was large with a population of 1.2 million. The annual assessment was \$20 on all single family residential parcels and an equally modest per square foot charge on commercial properties.

The goal was to raise approximately \$8 million a year for purchasing open space land. Hard to argue with that.

Taxpayer Challenge

A taxpayer group challenged the open space assessment arguing that under Prop 218 it needed a two-thirds majority of votes, not 50 percent. The trial court and Court of Appeal upheld the assessment. The case was appealed to the California Supreme Court.

California Supreme Court

The California Supreme Court overturned the Court of Appeal in a decision that has significant implications for assessment financing in California.

Prop 218 requires that property taxes be approved by a two-thirds vote, with limited exceptions like school financing under Prop 34. After Prop 218, public agencies often got around the two-thirds vote by imposing *assessments*, which are not considered taxes. Don't ask me the difference because I'm not sure I could tell you.

In order to have a valid assessment, thus allowing a 50 percent majority vote, there must be a "special benefit" conferred on a particular property and the amount on any given parcel must be in proportion to the special benefit conferred on the parcel.

The Court found it is insufficient to document that open space generally enhances properties in the open space district. The Court wrote, "to the extent that the value of property located in a desirable community is enhanced, this is a general enhancement of property values, and is thus, by definition *not* a special benefit".

To be valid the public entity imposing the assessment must demonstrate that the program of improvements or services to be financed will benefit properties to be assessed in a manner that is different from the benefit to society in general. For example, if a hundred lot owners on a road desire to assess themselves, they could do so with a vote of 50 percent, as their properties receive a "special benefit".

A general assessment, for open space for example, which benefits all properties equally does not provide a “special benefit” to any particular property. Two-thirds property owner approval is required.

The Supreme Court acknowledged that lower courts have been somewhat lenient in finding a “special benefit,” thus allowing assessments by majority vote. That is no longer possible.

Prop 218 Controls

The Court noted that Prop 218 was intended to make it more difficult for an assessment to be validated. Language in Prop 218 puts the burden of documenting an assessment and finding a “special benefit” on local governments, not challengers of assessment district financing. That makes it much harder for open space districts, sewer districts and the like to finance projects by assessments versus property taxes.

It remains to be seen just how much this new case changes assessment financing in California. My take is that traditional general-benefit assessment financing is dead - as was intended by Prop 218.

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