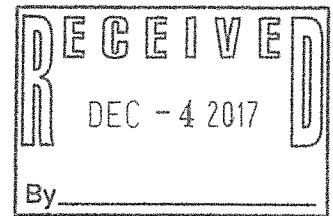


SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL



MINUTE ORDER

DATE: 11/30/2017

TIME: 10:14:00 AM

DEPT: C-70

JUDICIAL OFFICER PRESIDING: Randa Trapp

CLERK: Anthony Shirley

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT:

CASE NO: 37-2016-00045595-CU-MC-CTL CASE INIT.DATE: 12/28/2016

CASE TITLE: La Jolla Benefits Association LLC vs City of San Diego [IMAGED]

CASE CATEGORY: Civil - Unlimited CASE TYPE: Misc Complaints - Other

APPEARANCES

The Court, having taken the above-entitled matter under submission on 11/17/2017 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

MOTION FOR WRIT OF ADMINISTRATIVE MANDAMUS AND DECLARATORY RELIEF by petitioner La Jolla Benefits Association LLC is GRANTED.

Respondent City of San Diego's objections are sustained. Requests for Judicial Notice are granted, except as to those documents to which an objection was sustained.

Petitioner challenges Resolution R-310802, passed by the City Council on November 15, 2016, with final passage on November 28, 2016. The Resolution authorized the creation of a maintenance assessment district [MAD] in portions of La Jolla.

Statute of Limitations and Standing:

San Diego Municipal Code § 65.0214 provides that "The validity of an assessment levied under this Division shall not be contested in any action or proceeding unless the action or proceeding is commenced within 30 days after the resolution establishing the district and levying the assessment is adopted pursuant to San Diego Municipal Code section 65.0209..." Petitioner argues that the resolution was adopted on November 28, 2017, the date of final approval. Respondent argues it was adopted on the date the resolution was passed by the City Council. Both sides cited only to SDMC § 65.0214 and § 65.0209.

At oral argument, for the first time, petitioner cited to CCP § 329.5, which provides in part, "The validity of an assessment or supplemental assessment against real property for public improvements, the proceedings for which are prescribed by the legislative body of any chartered city, shall not be contested in any action or proceeding unless the action or proceeding is commenced within 30 days after the assessment is levied, or such longer period as the legislative body may provide." The section applies only where the municipality has not provided its own statute of limitations or where the municipality

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attempts to give less than 30 days for a taxpayer's suit. (*Alpha Beta Acme Markets, Inc. v. City of Whittier* (1968) 262 Cal.App.2d 16, 20)

Neither party referred the court to the language in Resolution R-310802 at ¶ 9: "The validity [sic] these assessments and the formation of the District shall not be contested in any action or proceeding unless the action is commenced within thirty (30) calendar days after the final passage of this Resolution. Final passage was November 28, 2016; this action was filed on December 28, 2016. The Petition is timely.

Petitioner has shown it has standing because it owns property within the proposed MAD. One of its members, A-440 Enterprises Inc. is a commercial property owner with Zone 1 of the MAD and is liable to pay the increased assessment.

The Petition was properly verified by petitioner's counsel because the president and operator of A-440 Enterprises, the manager of petitioner, was out of the county.

Validity of Resolution:

Petitioner contends the formation of the La Jolla MAD does not meet the requirements of the California Constitution, Art. XIII D because the City has not shown the properties to be assessed received special benefits, the assessments are not proportional and there were irregularities in the voting process.

Article XIII D of the California Constitution was enacted by the voters' passage of Proposition 218 in 1996. (*Golden Hill Neighborhood Association, Inc. v. City of San Diego* (2011) 199 Cal.App.4th 416, 420) Article XIII D restricts government's ability to impose assessments in several important ways. First, it tightens the definition of the two key findings necessary to support an assessment: special benefit and proportionality. An assessment can be imposed only for a 'special benefit' conferred on a particular property. (Art. XIII D, §§ 2, sub. (b), 4, subd. (a).) A special benefit is a particular and distinct benefit over and above general benefits conferred on real property located in the district or to the public at large. (Art. XIII D, § 2, sub. (i).) A general enhancement of property value does not constitute "special benefit. Further, an assessment on any given parcel must be in proportion to the special benefit conferred on that parcel: 'No assessment shall be imposed on any parcel which exceeds the reasonable cost of the proportional special benefit conferred on that parcel.' (Art. XIII D, § 4, subd. (a).) 'The proportionate special benefit derived by each identified parcel shall be determined in relationship to the entirety of the capital cost of a public improvement, the maintenance and operation expenses of a public improvement, or the cost of the property-related service being provided.' (Ibid.) Because only special benefits are assessable, and public improvements often provide both general benefits to the community and special benefits to a particular property, the assessing agency must first 'separate the general benefits from the special benefits conferred on a parcel' and impose the assessment only for the special benefits.' (Art. XIII D, § 4, subd. (a).) [¶]

Second, [article XIII D] established strict procedural requirements for the imposition of a lawful assessment." (Id. at 422–23) Under article XIII D, "local agencies must give the record owners of all assessed parcels written notice of the proposed assessment, a voting ballot, and a statement disclosing that a majority protest will prevent the assessment's passage. (Art. XIII D, § 4, subds. (c), (d).) The proposed assessment must be 'supported by a detailed engineer's report.' (Art. XIII D, § 4, subd. (b).) At a noticed public hearing, the agencies must consider all protests, and they 'shall not impose an assessment if there is a majority protest.' (Art. XIII D, § 4, subd. (e).) "A majority protest exists if, upon the conclusion of the hearing, ballots submitted in opposition to the assessment exceed the ballots submitted in favor of the assessment. In tabulating the ballots, the ballots shall be weighted according to

the proportional financial obligation of the affected property." (Art. XIII D, § 4, subd. (e).) (Id. at 423)

The rationale of special assessments is that the assessed property has received a special benefit over and above that received by the general public. The general public should not be required to pay for special benefits for the few, and the few specially benefited should not be subsidized by the general public. (Id. at 422)

The court has exercised its independent judgment in reviewing whether the proposed assessments violated article XIII D. (*Silicon Valley Taxpayers Ass'n, Inc. v. Santa Clara County Open Space Authority* (2008) 44 Cal.4th 431, 450)

As for the first requirement to identify the special benefit, petitioner argues that the City of San Diego Charter § 26.1 requires the City to provide "public works services, water services, building inspection services, public health services, park and recreation services, library services, and other such services as may be desired." It contends that the Preliminary Engineer's Report [PER] fails to differentiate between general benefits and the special benefit to be provided by the MAD and not all listed benefits are special benefits as they include maintenance of public buildings and parks and improved access and traffic flow to public facilities.

Respondent contends the PER incorporates the District Management Plan approved by the City Council on September 27, 2016 which adequately describes the improvement and activities to be provided by the MAD. This includes sidewalk power washing, replacement of City owned trash cans with special MAD owned receptacles, weed abatement, landscaping improvements, graffiti removal and gutter sweeping. The MAD is divided into Zone 1 [the business zone] and Zone 2 [the residential zone] with Zone 1 receiving more frequent services and paying more for the increased services.

Pursuant to *Golden Hill, supra*, the general benefits must be separated from the special benefits and the assessment be imposed only for the special benefit. (*Golden Hill* at 423) The City must use a professional engineer's report to estimate the amount of special benefits landowners would receive from the project or service, as well as the amount of general benefit. (Id. at 436)

Here, the PER states the MAD "will fund the improvement, maintenance, and servicing of landscaping, sidewalk washing, trash collection and removal, and graffiti removal along portions of the streets with the Village Area La Jolla..." These improvements and activities are designed to clean up the area on a more frequent basis, enhance the desirability of the area and to improve commerce within the Village Area." (AR 275) A Management District Plan was prepared by Civitas dated August 8, 2016 identified the two zones and the boundaries of the MAD. It also included the frequency of services. (AR 276) The PER further describes improvements and activities to be maintained as follows:

Landscape Improvements and Activities:

- Shrub and ground cover maintenance including trimming and edging monthly and fertilizing;
- Manual watering of pots once per week;
- Weed abatement;
- Power washing; and
- Tree maintenance including trimming up to 12 feet to clear trees for vehicle and pedestrian traffic and fertilizing twice per year.

Sidewalk Improvements and Activities:

- Sidewalk steam cleaning annually for Zone 1 properties and less frequently for Zone 2 properties;

Trash Collection Improvements and Activities:

Trash collection twice per week;
Trashcan liner replacement twice per week; and
Litter/Pet Waste pick up. (AR 277)

There is also a Special Benefit Analysis: AR 280 contains the Special Benefit Analysis:

Proper maintenance and servicing of landscaping, sidewalk sweeping and washing, trash collection and removal and graffiti abatement provide special benefit to adjacent properties by providing community character, safety, vitality and an enhanced village lifestyle. In addition, the Improvements and Activities will enhance the ability of property owners to attract and maintain customers as well as increase the viability of commercial development.

The special benefits are summarized as:

- Improved cleanliness and maintenance of sidewalks used to access property in the District;
- Enhanced cleanliness and desirability of the area, including removal of litter and debris from sidewalks, trash cans and other public facilities for the direct advantage of property in the District;
- Protection and improvement of views, scenery and other permanent public facility resources in the District and preservation of public assets maintained by the District;
- Enhanced safety of property in the District and reduced liability risk;
- Improved access to property in the District due to cleaner and safer sidewalks;
- Increase of property values specifically to assessed parcels resulting directly from the provided services; and
- Improved traffic flow and commerce to properties within the area.

Other sections provide:

In addition, only parcels that front the streets and sidewalks on which services are provided are included in the District. Therefore, property within the boundaries of the District enjoy a unique and valuable proximity and access to the Improvements and Activities which provides a direct and special benefit to the properties that are not enjoyed by the public at large or property outside the District. (AR 280-281)

The City currently provides a base level of services to portions of the parcels with a portion of the cost funded by the La Jolla Village Business Improvement District. Without the enhanced Improvements and Activities proposed would not be provided. Thus the MAD provides Improvements and Activities over and above what would otherwise be provided. The public at large and properties outside the boundaries of the District receive only limited benefits from the Improvement and Activities because of their proximity or lack of direct access to the improvements. (Id.)

The MAD will still receive the standard level of service provided under City-funded and administered program, such as maintaining and servicing medians, open space, street lights, street tress, sidewalks, parks, street sweeping and graffiti removal on public property. Without or without the MAD, they will continue to receive the City standard level of services and specifically landscaping services funded by the La Jolla Business Improvement District. (AR 282)

The benefit to the public at large is difficult to substantiate. Since the improvements are to improve the appearance and identity for the La Jolla downtown, there is very little if any general benefit to the public at large. However, a traffic study in March 2016 to isolate pass through traffic along the main road

estimated that 5.165 of the total benefit in excess of the City standard may accrue to properties outside the District and to the public at large. (AR 283) The City standard is quantified as 3.49% and the general benefit to properties outside the district is 5.16% for a total of 8.65% General Benefit. (Id.)

As stated in *Golden Hill*, virtually all public improvement projects provide general benefits. Thus, benefits such as cleaning the sidewalks, improving access and traffic flow and protecting public facility resources provide obvious benefit to the general public and well as to residents of the MAD. (See, *Golden Hill* at 439) Unlike the *Golden Hill* case, the City did identify some special benefits and made an attempt to quantify general and special benefits. But by including general benefits as special benefits and not taking into account the benefits the City provides, the City has not shown that the special benefit assessments are proportional. Further, it appears part of the MAD occupies the same area as the La Jolla Business Improvement District which already levies an annual assessment and provides some of the same benefits. Thus, the City has not shown that the PER, which incorporates the District Management Plan, complies with requirement to separate the general benefits from the special benefits and impose the assessment only for special benefits. (Art. XIID §4(a))

As for irregularities in the voting process, petitioner claims property owners were given insufficient notice and information because the duration of the payments was not disclosed and the notice did not explain why the assessment would be imposed nor provide a list of services to be provided. Further, the Administrative Record does not show it was provided to all affected property owners. In fact, the official ballot provided descriptive how to vote, who can vote and the dates, but the sample ballot was not included.

The City contends it complied with all requirements in that the duration is not required to be included in the ballot, all property owners were provided with a Notice of the Proposed Assessment and Public Hearing which included the purpose of the balloting proceeding, the proposed budget, information on voting rights and clearly stated the District assessments would start in fiscal year 2017/2018 and would last until dissolution of the district unless suspended. Finally, it included a sample ballot with voting instructions and that late ballots or partially completed ballots would not be counted.

Under article XIII D, "local agencies must give the record owners of all assessed parcels written notice of the proposed assessment, a voting ballot, and a statement disclosing that a majority protest will prevent the assessment's passage." (Art. XIII D, § 4, subds. (c), (d).) (*Golden Hill Neighborhood Assn, Inc. v. City of San Diego* (2011) 199 Cal.App.4th 416, 423) The Notice shall also include the total amount chargeable to the entire district, the amount chargeable to the owner's parcel, the duration of the payments, the reason for the assessment and the basis upon which the amount of the assessment was calculated, together with the date, time and public of public hearing. The Notice must summarize the procedures applicable to the completion, return and tabulation of the ballots. (Art. XIID, § 4 subd. (c))

Here, the Administrative Record includes a Proof of Publication in the Daily Transcript providing published notice of the resolution of intention to form the district. It also includes a Notice of Proposed Assessment and Public Hearing which included a Sample Ballot. (AR 41-351) The Notice indicated it concerned a new assessment and district to provide enhanced improvements and activities, designated as services, over and above those provided by the City of San Diego. It listed the services to be funded and the MAD budget. It provided the assessment, if approved, would start in fiscal year 2017-2018 until the dissolution for the district. It provided the calculation for the assessment and summary of assessment rates. The date of the public hearing was included, as were instructions for voting. The signed ballots had to be received by the City Clerk on or before the close of the public input portion of the public hearing on November 15, 2016. Only properly filled out ballots would be counted. Owners

were also advised the ballots were 'weighted' by the dollar amount of the assessment paid and how the ballots would be tabulated. The Sample Ballot and instructions were included. Returned ballots, Requests to withdraw ballots and undeliverable ballots are included in the record. (AR 41- 358-361; 64-15263-17423) The Notice complies with the requirements of Art. XIID, § 4, subds. (c) and (d).

In conclusion, the Writ of Administrative Mandamus is granted because the City has not shown it adequately separated the general benefits from the special benefits conferred on a parcel and has not shown the special benefits were over and above the general benefits conferred by the general facilities of the City. As such, it has not shown it imposed the assessment only for the special benefits.

IT IS SO ORDERED.

Randa Trapp

Judge Randa Trapp

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

Central
330 West Broadway
San Diego, CA 92101

SHORT TITLE: La Jolla Benefits Association LLC vs City of San Diego [IMAGED]

CLERK'S CERTIFICATE OF SERVICE BY MAIL

CASE NUMBER:
37-2016-00045595-CU-MC-CTL

I certify that I am not a party to this cause. I certify that a true copy of the attached minute order was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The mailing and this certification occurred at San Diego, California, on 11/30/2017.

Clerk of the Court, by: 
A. Shirley, Deputy

MICHAEL AGUIRRE
501 W BROADWAY # SUITE 1050
SAN DIEGO, CA 92101

MARIA C SEVERSON
501 W BROADWAY # 1050
SAN DIEGO, CA 92101

CARMEN A BROCK
DEPUTY CITY ATTORNEY
1200 THIRD AVENUE # 1100
SAN DIEGO, CA 92101-4178

Additional names and address attached.