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UPDATE: California Court of Appeal Again Denies Property Owner's Challenge to the Creation of a Special Assessment District

In *Robert Dahms v. Downtown Pomona Property and Business Improvement District*, (--- Cal. Rptr.3d ---, Cal.App. 2 Dist., May 12, 2009), a California Court of Appeal considered a property owner's challenge to the creation of the Downtown Pomona Property and Business Improvement District ("PBID"), a special assessment district. With the case on remand from the California Supreme Court, the Court of Appeal again determined that the property owner failed to show that the creation of the PBID was improper.

Facts

Four property owners requested that the City of Pomona ("City") create the PBID. City hired a consultant, MuniFinancial, to assist in creating the PBID. After the City Council received a management plan and a petition signed by over 50 percent of the affected property owners, it passed and approved a resolution which declared its intent to form the PBID. City mailed out ballots to the affected property owners and the City Council subsequently held a public hearing to count the ballots. Only 66 ballots opposed the creation of the PBID while 126 ballots favored its creation. As required by California law, the ballots were also tabulated after being multiplied by the dollar amount assessed for each respective property, and the weighted vote equaled \$338,461.29 in favor and \$153,156.86 against.

City Council then passed three resolutions regarding the formation of the PBID. The first declared the results of the balloting; the second approved the formation of the PBID and specified the boundaries, services, assessment costs, and other related measures; and the third approved the engineer's report prepared by MuniFinancial. MuniFinancial's report explained that the PBID would provide the following services: security, streetscape maintenance, and marketing, promotion, and special events. It also specified that the assessment amount for each property in the

Note:

KMTG reported on the first appellate court decision of the *Dahms* case in "[California Appellate Court Denies Property Owners' Challenge to the Creation of a Special Assessment District](#)", April 27, 2006.

Also, for a discussion of the referenced *Silicon Valley* case, please see our Legal Alert entitled, "State Supreme Court Tightens Special Benefit Assessment Standards", July 18, 2008.

PBID would be calculated based on three factors: street frontage (the length of the street address side of the property), building size, and lot size. The factors accounted for 40 percent, 40 percent, and 20 percent, respectively, of the assessment cost for each property. The report additionally explained that various non-profit entities would only be assessed for 5 percent of the basic assessment rate, and properties zoned residential within the PBID would be exempt from the assessment cost.

Dahms owns several properties within the PBID and he challenged its creation by filing a lawsuit against City and the PBID. The trial court found in favor of City and the PBID, a decision which the Court of Appeal affirmed. Dahms sought review in the California Supreme Court. The Supreme Court granted review but deferred its decision pending the outcome of *Silicon Valley Taxpayers' Assn., Inc. v. Santa Clara County Open Space Authority* (2007) 44 Cal.4th 431. In the *Silicon Valley* case the Supreme Court ultimately determined that the proper standard of review for a court to apply is de novo. The Supreme Court remanded Dahms' case back to Court of Appeal for reconsideration in light of the Supreme Court's holding in *Silicon Valley*.

Decision

Dahms first asserts on appeal that the hearing

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on the assessment was premature in violation of article XIII D of the California Constitution. The hearing took place on the forty-fifth day after City mailed notice of the proposed assessment to the property owners within the PBID. Article XIII D provides that City must "conduct a public hearing upon the proposed assessment not less than 45 days after mailing the notice of the proposed assessment to record owners of each identified parcel." Pursuant to the terms of article XIII, the hearing can be held 45 days after the notices are mailed. The Code of Civil Procedure provides the method for computing the days, under which the first day is excluded and the last day is included, unless it is a holiday. Here, the hearing took place 45 days after the day of mailing (excluding the day of mailing and including the day of hearing), thus City did not violate the constitutional notice provision.

Secondly, Dahms challenges the creation of the PBID on the ground that there was insufficient evidence that the assessment amounts were proportional to the special benefits conferred. Dahms asserts that the discounted assessments applied to properties owned by nonprofit entities violate article XIII D because the assessments are not proportional to the benefits received. The court found nothing in article XIII D either prohibits discounted assessments, or requires that they be uniformly applied across all of the assessment district's parcels. What article XIII D does require "is that the assessment on a particular parcel not exceed the reasonable costs of the proportional special benefit conferred on that parcel." Discounted assessments do not violate this requirement "so long as those discounts do not cause the assessments imposed on the remaining parcels to exceed the reasonable cost of the proportional special benefit conferred on those parcels." The court concluded that article XIII D does not prohibit discounts as long as those discounts do not cause the other assessments in the district to violate its terms.

Dahms also claims that certain commercial properties were not assessed at all. This argument fails, however, because article XIII D does not prohibit discounts and also because Dahms fails to identify the parcels he claims

were not assessed. Dahms also asserts that the assessments are not proportional to the special benefits conferred because they are based on 37 percent of the street frontage instead of 100 percent. Dahms apparently arrived at the 37 percent figure by dividing the total amount of street frontage used to calculate the assessments, 18,504 feet, by the total amount of street frontage for all PBID properties, 49,960 feet. Dahms' calculation, however, is only supported by his unsworn testimony. Even if Dahms' calculation is correct, he is still just arguing that the assessments are not proportional to the special benefits rather than that the assessments exceed the reasonable cost of the proportional special benefit. The use of the term street frontage really refers to front footage and not the total street length, which is the total length of street on which a property borders. Use of front footage to determine assessments makes sense when determining the proportional special benefit because a clean and safe front entrance is more likely to constitute a special benefit than a clean and safe rear or side portion of a building, where there may not be an entrance.

Third, Dahms argues that, in creating the PBID, City violated article XIII D because it failed to distinguish between "general benefits" and "special benefits." Article XIII D, § 4, subdivision (a) provides that "[o]nly special benefits are assessable, and an agency shall separate the general benefits from the special benefits." "Special benefit" is defined 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." The court determined that Dahms' argument fails because the services provided by the PBID, including security, street maintenance, and marketing, constitute special benefits, not general benefits. City thus appropriately calculated the benefits.

Lastly, Dahms claims that certain findings made by the City were not supported by the evidence. The court disagreed with Dahms and found City's findings to be supported by the evidence. The Court of Appeal affirmed the ruling of the trial court in favor of City and the PBID, holding that the PBID was properly

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created.

Questions

If you have any questions concerning the content of this Legal Alert, please contact the following from our office, or the attorney with whom you normally consult.

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