



League of California Cities – Municipal Finance Institute

*Prop 218, Assessments, Special Districts,
Recent Trends*

Chris Fisher, Willdan; Tom Borden, City of San Jose

November 29, 2012

Introductions

- *Chris Fisher* – Group Manager, Willdan Financial Services, Assessments / Special Taxes, Utility Rates and Proposition 218 Consultant
- *Tom Borden* – Special Districts Manager, City of San Jose



Presentation Overview

- Review of Prop 218
- Assessments, Special Districts
- Review of recent court decisions
- Shifting landscape
- City of San Jose – PBID case study
- City of Arcadia – case study



Proposition 218 Review

Proposition 218 - What's it all about?

- Approved in November 1996 – added Articles XIII C and D to California Constitution
- Limited ability of agencies to raise revenues through taxes, assessments and fees
- Addressed loopholes exploited in Prop 13
- Addressed imposition and approval requirements of local:
 - Taxes
 - Property-related fees and charges
 - Assessments

What did Prop 218 say?

- Defined assessments, property related fees, general and special taxes and various voting thresholds
- Strengthened requirement to base assessments on special benefit
- Taxes - no strict nexus: *reasonable* connection between payer and benefit
- Burden of proof shifted to agencies
- Required assessment of publicly-owned parcels
- Property owner approval process and mailed ballots
- Certified Engineer's Report required
- Defined procedural requirements for new/increased assessments
- Defined some exemptions for existing assessments
- Property owner approval, hearing, noticing and mailed ballot procedures



Assessments and Special Districts

Assessments – Common Principals

- Based on special benefit
- Cannot fund general benefit improvements
- Publicly-owned parcels may be subject
- Identify improvements, identify benefits
- Prepare Engineer's Report
- 45 day notice and ballot period (mailed ballot)
- Simple majority protest – ballots weighted by assessment dollar amount
- Subject to statutory and constitutional authority (Prop 218)

Assessment Pros & Cons

- **Pros:**
 - Limited election timing restrictions
 - Simple majority approval
 - Property owner vote weighted by \$ amount (one dollar = one vote)
 - Relatively easy for property owners to understand
 - Provide ongoing funding source
- **Cons:**
 - Statutory limitations on what they can pay for
 - Special benefit finding
 - General benefit funded from other sources

1913 Act Assessments

- **Capital Projects**
 - Streets, drainage, sewer, water
 - Electrical lines and conduits, street lights
 - Seismic, fire safety and stations, transportation facilities and park improvements
 - Land acquisition – easements
- **Services**
 - Only what was funded by bond issue
 - Limited maintenance provision
- **Issue bonds through Improvement Bond Act of 1915**

1972 Act Assessments

- Landscaping and Lighting Districts
- Capital Projects
 - Parks – playgrounds, landscaping
 - Street lights, traffic lights
 - Acquisition of land or improvements
 - Curb and gutter
 - Community center/senior center
- Services (maintenance)
 - Parks – playgrounds, landscaping
 - Street lights, traffic lights
 - Community center/senior center

1982 Act Benefit Assessments

- Can fund special benefit improvements
- Streets, streetlights, storm drainage, flood control
- Both construction and maintenance
- Land acquisition – easements

Community Facilities Districts (CFDs)

- Allow for broad range of facilities and services and flexibility in levying tax
- Reasonable nexus required between property, services and improvements
- Annual budget determined by Special Tax Requirement
- Special tax spread to taxable property per rate and method of apportionment (RMA)
- Districts designed to be self-funding
- Require 2/3rds approval

CFDs Can Provide

- Services
 - Police, fire, ambulance and flood
 - Library, recreational (registered voter vote)
- Infrastructure
 - Water, sewer and utilities
- School facilities
- Public facilities
 - Benefit to public
 - On public property
- Parks and landscaping, road maintenance
- Facilities with useful life greater than five years

CFD Pros & Cons

- **Pros:**
 - Limited restrictions on election timing
 - Property owner vote (if < 12 registered voters)
 - Issue bonds or pay-as-you-go
 - Can annex additional areas
 - Development pays its share
 - Capital facilities - growth does not impact existing property owners
- **Cons:**
 - “Mello-Roos” stigma
 - Additional tax burden to property owners
 - Tax rate inequities
 - 2/3rds threshold

CFD - City of San Jose Examples

- Our response to legislative uncertainty, risk & potential scrutiny was to utilize CFD's where feasible.
- We've created 6 CFD's for enhanced services as replacements for assessment districts.
- Plus 2 new districts just formed to add new services for stormwater quality control measures.
- One district is maintaining dual use features in parks.
- The second is maintaining bioretention cells in park strips and a sanitary sewer pump station.



Recent Court Rulings and Impacts

Legal Landscape

- Prop 218 around since 1996 – not new
- Santa Clara case changed everything
 - First Supreme Court decision
 - New standard of review
- Increased emphasis on separation of general benefit
- Special benefits must be well defined and substantiated

Legal Landscape (continued)

- Good news – some guidance relative to methodology and approach (Tiburon, Pomona)
- Not so good news – larger districts under increasing scrutiny
- Assessments for public safety, parks and other services in question
- Carrying forward with old approach no longer works

Silicon Valley vs. Santa Clara Open Space

- Silicon Valley Taxpayers Association vs. Santa Clara County Open Space Authority (2008)
- First Supreme Court ruling on assessments to analyze Prop 218 proportionality requirement
- Special benefit must be particular and distinct from benefits to other parcels and real property in general, and public at large
- No differentiation in levels of special benefit (proximity, etc.)
- Improvements or services (and cost) must be identified and quantified, no backing in
- Questioned assessments for broad, regional services
- Essentially stated there must be general benefit
- Courts must use independent judgment in review

Dahms vs. Downtown Pomona PBID

- Robert Dahms vs. Downtown Pomona PBID (2009)
- A win for assessments
- Court found no fault with methodology – using several property characteristics, i.e. front footage, building size, parcel size
- Allowed discounting of assessments – as long as no other benefitted properties are assessed for more than proportionate special benefit
- Affirmed services provided by PBID afforded parcels a benefit that was particular and distinct
- Also, how to count to 45!

Tiburon vs. Bonander

- Town of Tiburon vs. Jimmie D. Bonander (2009) – two cases
- Challenge to components of utility undergrounding district – esp. proportionality, cost
- Cost zones not allowed, zones must be based upon benefit only
- All parcels benefitting must be included in district
- Each parcel's proportionate special benefit must be based upon cost of entire project
- Court again found no fault with methodology – special benefits identified in Engineer's Report were special, ok that special benefit was conferred equally
- Court affirmed general enhancement of property value does not mean a benefit is general

Beutz vs. County of Riverside

- Steven Beutz vs. County of Riverside (2010)
- Ruling on a regional (soon to be citywide) park district, focused on definition and determination of special and general benefit
- Struck down an assessment imposed by the County of Riverside to fund the maintenance of landscaping within four public parks
- Reaffirmed requirement to analyze general and special benefit – assess only for special
- Engineer's Report did not identify and quantify general benefit
- Report did not provide differentiated levels of special benefit (proximity to park facilities)
- Case emphasizes how agencies need to separate and quantify special and general benefit, allocate only special benefit

West Point Fire..but wait...THIS JUST IN!!!

- Concerned Citizens for Responsible Government vs. West Point Fire Protection District (2011)
- Court *again* addressed larger 'regional' type districts and special and general benefit
- Questioned assessments for fire services, and went further to address park and library services
- Fire protection not a special benefit, assessment was essentially a special tax
- A finding must be made that facilities and/or services provide special benefit to property
- General benefit must be quantified and separated

Golden Hill vs. San Diego

- Golden Hill Neighborhood Association, Inc. vs. City of San Diego (2011)
- Addressed special and general benefit again – Engineer’s Report failure to identify and separate
- Struck down assessments levied against public properties – no proportionality finding
- Can only assess for benefits that are over and above benefits received by the public at large
- Even minimal general benefits must be identified
- Case emphasized need for public agencies to provide thorough administrative record

Palmdale – Utility Fees

- City of Palmdale vs. Palmdale Irrigation District (2011)
- Agencies have burden of demonstrating compliance
- Agencies must fairly allocate costs of services, document methodology used and its justification
- Post-Prop 218 – validity of property-related fees has become constitutional question
- Courts will exercise their independent judgment – responsible for enforcing provisions of Constitution
- Burden on the agency to demonstrate compliance
- Must have thorough administrative record



The New Normal – Implications for New Districts and Balloting

Shifting Landscape

- More focus on addressing special and general benefit
- Difference in benefit vs. difference in cost
- Ensuring proportionality in assigning special benefit
- Impact on existing assessments – potential challenges
- Take extra care forming new assessments
- Certain situations not suited for assessments
- Where other types of districts work
- Create thorough administrative record
- Industry efforts and education

General and Special Benefit

- Only special benefits assessable, agency must separate general from special benefits
- Must ensure special benefits are truly particular and distinct
- Must quantify special *and* general benefit – Silicon Valley, Beutz, Golden Hill
- Must be a methodology or basis, i.e. trip count, census, radius, proximity, etc.
- Cost associated with general benefit cannot be included in assessment

More on Benefit

- Benefit to each parcel must be proportional to it's share
- Benefit may not exceed parcel's proportionate share
- All benefitting parcels must be assessed (Bonander)
- Benefit zones permitted only where there are distinct differences in benefit, *not cost*
 - Variances in level of service
 - Variances in improvements provided,
 - Location, etc.

Things to Consider Before Balloting

- Determine needs
 - Analyze extent, nature and location of improvements
 - Develop thorough budget
 - Identify long-term service requirements and needs
- Have a clear understanding of benefit
 - Clear nexus between properties and improvements/services
 - Account for general benefit, develop methodology accordingly
- Clear, concise, easy to understand materials
- Take into account: political factors, public perception, values, support

More Considerations...

- Evaluate potential alternatives
 - Level of General Fund subsidy
 - Reduce current levels of service
 - Outsource services (contract services)
 - When re-engineering – possible enhancements
 - Consider alternative revenue mechanisms
 - Special Tax, CFD
 - Consolidation, expansion or re-engineering

Considerations for Existing Assessments

- Reports must account for latest case law – reports older than *Silicon Valley* should be thoroughly reviewed, maybe rewritten
- Special/general benefit requirements are more exacting
- Agencies should allow time for legal review of Engineer's Reports
- Important to track legal developments, (numerous for assessments over past five years)
- Critical in assessments for services; again, look at benefit zones
- Clear comprehensive administrative record – courts need to understand process, rationale
- Build entire administrative record to support cost of service



City of San Jose Downtown PBID Case Study

Downtown PBID - The Original

- Approved initially in 2007 (5 year approval)
- Original benefit analysis based on “Clean and Safe” and “Image Enhancement”
- Services focus on cleaning, graffiti abatement, trash collection, landscape and information ambassadors
- General benefit contribution based on previous services delivered and continuation of some services
- \$1.7 million annual collections

Downtown PBID – The Renewal

- Renewed in June 2012 (10 year approval)
- Assessment increase of approximately 11.9%
- Engineers Report grew to 21 pages
- Benefit analysis completely re-evaluated
- New analysis based on “Environmental Factors” and “Economy Activities”
- Benefit specific to various property types and uses
- All benefit (Special or General) must be quantified
- \$2.2 million annual collections

Downtown PBID

- Special Benefit
 - New analysis based on “Environmental Factors” and “Economy Activities”
 - Benefit specific to property types and uses; separate analysis needed for each
 - Separate zones of service / benefit
 - Must have support for claims and percentages because “The professional said so” is not enough
 - Consider known benefit resources: National Tree Benefit Calculator or STRATUM as examples
 - Avoid obvious reverse engineering

Downtown PBID

- General Benefit
 - Must be quantified and separated
 - Significant analysis utilizing benefit factors, parcel analysis and public survey statistics
 - Benefit evaluated both inside and outside district
 - Results identified a 1.70% general benefit conferred by PBID activities

Downtown PBID

- Services
 - New service focus to create visible, tangible, lasting, results
 - Beautification, tree trimming, street furniture repair, cleaning, graffiti abatement
 - Information & safety ambassadors
 - Wayfinding enhancements
 - Business retention & growth
 - Enhanced security for public spaces

Downtown San Jose Property-Based Improvement District

Equipment List

Cleaning	
Tenant M20 scrubber	1
Green Machine sidewalk sweeper	4
Hydrotek pressure washer	5
Hydrotek twister attachment	4
Taylor Dunn electric cart	2
Kubota utility vehicle	2
Windoor sweepers	4
Moto-Scrubber (hand held)	3
Rubbermaid cleaning carts	8
Advance Warrior (walk behind) scrubber	2
Chevrolet pickup truck	1
Utility trailer	1
Ambassador:	
Segway transporters	3
Fuji bicycle	1
Apple iPhone	8
Apple iTouch	8
Other equipment:	
Motorola radios	19
Radio repeater	1
Desktop computer	1

Downtown PBID

- Challenges and Lessons
 - Must have involved, cohesive community group to manage, guide and garner support
 - Renewal risks and cost considerations
 - Law specifically exempts parcels zoned solely for residential
 - Public parcel collections
 - Accuracy and availability of complete data
 - Transfers of ownership from public to private or reverse
 - Prevailing wage considerations
 - General fund obligation for general benefit
 - Your attorneys are your friends

Downtown PBID

Aside from all these challenges:

Who doesn't want to drive
a sidewalk Zamboni!



City of Arcadia Case Study

Existing Streetlight Funding

- Original assessment % of assessed value (1919 Act)
 - Issues for equity and revenue stability
- Assessment in place for more than 50 years
- Annual streetlight maintenance costs exceed \$1MM
- Assessment generated approx \$400K/year for lighting maintenance – City funded remainder
- Essential and historical funding source for City
- Assessment would sunset after June 30, 2010

Considerations and Options

- Needed to implement new stable revenue stream
- Needed to convince property owners to approve
- Without new funding City would need to reduce or eliminate some streetlight maintenance costs
- Limited control over energy costs
- City liability for maintaining streetlights (arterials)
- Fund entire budget through General Fund
 - General Fund resources already limited
- Establish new dedicated funding mechanism to fund authorized costs

Funding Solutions Considered

- Special Tax
 - Also dedicated
 - Some additional disclosure required
 - Requires 2/3rds approval or *registered voters*
- Funding objectives
 - Fund entire maintenance budget amount
 - Continue same funding level, with some City assistance
- Assessment structure
 - More equitable if based on special benefit
 - Defensible, straightforward methodology

Funding Solutions Considered

- Assessment
 - Dedicated revenue stream and not subject to fluctuation
 - Assessment already in place – terminology the same
 - Only affected property owners would cast ballots
 - i.e. property owners rather than registered voters
 - Simple majority (weighted by assessment) required
 - Technically absence of a majority protest
 - Have to adhere to assessment benefit requirements

Assessments

- Arterial streets serve public at large as well as parcels being assessed
 - General benefit calculated based on trip generations
- Total budget: \$1,019,595; General benefit: \$214,661
- Authorized budget: \$804,934
 - Two benefit zones established to fairly apportion costs
 - Arterials (Zone 1) – 13%; Non-arterials (Zone 2) – 87%
 - City moved forward with a total budget for assessments of \$428K

Results and Conclusions

- 16,597 ballots mailed - 5,490 returned (33%)
- 60% of returned assessments in favor (by \$)
- No majority protest existed – council approved
- Assessment will continue in perpetuity
- Generate \$428K in initial year
- Includes 3% inflator
- Technically sound
- Educate property owners on need and process
- Holistic approach – assessment engineering & outreach

Contact Us

- Chris Fisher: Group Manager, Willdan Financial Services, cfisher@willdan.com or (951) 587-3528
- Tom Borden: Special Districts Manager, City of San Jose tom.borden@sanjoseca.gov or (408) 535-6831