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Easing the Path to Special Assessments

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The California Court of Appeal recently took a more lenient stance on the use of special assessments to pay for improvements whose benefits are difficult to measure within a master planned community. In *Beutz v. County of Riverside*, 10 C.D.O.S. 6589, the Fourth District held that where a special assessment is levied on real property within a special assessment district to fund just a portion of an improvement project, such assessment may be based on the "special benefit" conferred on the assessed property by the entire improvement project.

Many developers, cities and counties have elected not to use special assessments to pay for construction or maintenance of parks and open space due to concerns that it would be difficult to demonstrate that such amenities conferred any "special benefit."

In *Beutz*, the court determined that an assessment to pay for the maintenance of landscaping in local public parks was properly based on the special benefit conferred as a result of the parks being part of a master plan to acquire and develop parks. However, the *Beutz* court found that a local government agency levying an assessment, in order to prove that the assessment is in proportion to the special benefit, must still quantify the relative amounts of special and general benefits conferred. Thus, considerable hurdles still remain for developers, cities and counties that want to use assessments for mas-

ter planned public improvements and maintenance.

CONSTITUTIONAL REQUIREMENTS

The California Constitution imposes two substantive requirements on the levy of a special assessment on real property within a special assessment district. First, the assessment can be imposed only for a "special benefit" conferred on the real property assessed. Second, the assessment on each parcel must be in proportion to, and not greater than, the special benefit conferred on that parcel. The local government agency levying an assessment bears the burden of proving that such assessment meets both requirements.

SPECIAL BENEFIT REQUIREMENT

For purposes of the first requirement, the California Constitution defines "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." If a proposed project will provide both general benefits to the community and special benefits to particular properties, the agency can impose an assessment based only on the special benefits. It must separate the general benefits from the special benefits and must secure other funding for the general benefits. This standard has typically made it difficult for local jurisdictions to find a way to levy assessments for improvements that arguably have a general community benefit, such as parks and open space.

THE 'BEUTZ' CASE

In *Beutz*, the County of Riverside adopted a master plan for the acquisition and development of certain public parks and park facilities. Thereafter, it formed a special assessment district over a residential area. An assessment levied on such properties would pay for all of the

ongoing costs of maintaining the parks' landscaping. An engineer's report supporting the assessment determined that each single-family residential unit in the district would benefit equally from maintaining the landscaping regardless of its proximity to the parks. The amount of the annual assessment was calculated by dividing the annual costs of maintaining the landscaping by the total number of such units.

The plaintiff, a property owner, argued that because the assessment was based solely on the costs of maintaining the parks' landscaping, the county must assess only for the special benefit conferred by the landscaping portion of the master plan, not the master plan as a whole. The court, however, held that the county properly determined the amount of assessable special benefits by analyzing the general and special benefits of the entire master plan, and not just the landscaping portion.

PROPORTIONALITY REQUIREMENT

The *Beutz* court nevertheless invalidated the special assessment because the county did not satisfy the second substantive requirement, in that it failed to meet its burden of demonstrating that the assessment was proportional to the special benefit conferred by the master plan.

Specifically, Justice Jeffrey King wrote, the engineer's report for the assessment failed to separate the general from the special benefits to be realized from the implementation of the entire master plan and estimate the quantity of each in relation to the other. It lacked an analysis of the extent to which owners of district parcels, relative to the general public and relative to one another, might reasonably be expected to use or benefit from the parks. Moreover, the assessments appeared to be cost-driven rather than special benefit-driven, i.e., based solely on the annual costs of maintaining the parks' landscaping, rather than the spe-

cial benefits conferred by the parks on assessed parcels.

IMPLICATIONS GOING FORWARD

Beutz shows that California courts may be willing to uphold a special assessment to fund only part of a larger project that is based on the special benefit conferred by the larger project (e.g., the implementation of a master plan). However, Beutz also shows that local government agencies have a difficult burden of proof to meet with respect

to whether the amount of the special assessment and the amount of special benefit conferred are proportional. Governmental agencies looking to bolster the enforceability of their special assessments should try to obtain as much credible evidence as they can concerning the relative quantities of general and special benefits. Any engineer's report supporting a special assessment should demonstrate the relative quantities of general and special benefits. Moreover, it should demonstrate that the assessment levied on each parcel is propor-

tional to the special benefit conferred on that parcel. Lastly, a special assessment should be special benefit-driven, not cost-driven.

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