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memorandum
privileged communication

To

Brad Segal
Progressive Urban Management Associates

From

Thomas H. Webber and Vincent L. Brown

RE

Assessment Allocations Under Article XIII D of the California Constitution.

Question Presented.

You have asked whether a property located within an assessment district that receives a special benefit must be allocated a proportionate share of the cost of the special benefit received.

Short Answer.

Yes. Each property within an assessment district that receives a special benefit must be allocated a proportionate share of the cost of the special benefit.

Discussion.

A. Mandatory Allocation of Costs in Proportion to Special Benefit Conferred

Article XIII D Section 4(a) of the California Constitution provides, in pertinent part, that an agency which proposes to levy an assessment shall "identify ***all parcels which will have a special benefit conferred upon them*** and upon which an assessment will be imposed. The proportionate special benefit derived by each identified parcel is to 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. No assessment shall be imposed on any parcel which exceeds the reasonable costs of the proportional special benefit conferred on that parcel."

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Article XIII D Section 4(a) has been interpreted by the court in *Golden Hill v. City of San Diego*, 199 Cal. App. 4th 416 (2011) as a restriction "on 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." Id. at 422,423.

In addition to the analysis provided above in *Golden Hill*, the court's analysis on the special benefit and proportionality requirement under Article XIII D in *Beutz v. County of Riverside*, 184 Cal. App. 4th 1516 (2010) proves to be instructive.

In *Beutz*, the California Court of Appeal for the Fourth District held that the County of Riverside failed to meet its constitutionally mandated burden of demonstrating that the assessment imposed under its assessment district was proportional to, and did not exceed the value of the special benefits conferred. In *Beutz*, the County of Riverside formed a special assessment district to pay the annual costs of refurbishing and maintaining landscaping in four public parks in the community. Beutz, a residential property owner within the district, filed suit against the County of Riverside to void the assessment on grounds that the assessment violated Article XIII D of the California Constitution. Though focusing on the need to separate general from special benefits as required by Article XIII D, the court also addressed the special benefit and proportionality requirement.

"The special benefit and proportionality requirements are perhaps best understood as being interrelated, not separate, requirements. The proportionality requirement ensures that the aggregate assessment imposed on *all* parcels is distributed among all assessed parcels in proportion to the special benefit conferred on each parcel. The special benefit requirement is thus part and parcel of the proportionality requirement. It is useful, however, to separately discuss special benefits in order to ascertain whether the public improvement or property related service underlying the assessment confers any special benefits on district in the first place." *Beutz*, 184 Cal. App. 4th 1516, 1522.

In another case that examined the proportionality requirement, the California Court of Appeal for the First District found, in *Town of Tiburon v. Bonander*, 180 Cal. App. 4th 1057(2009), that the Town of Tiburon failed to meet its burden under Article XIII D Section 4(f) where it excluded certain properties from the district, despite the fact that these properties received a special benefit. The court reasoned that, "If a property receiving a special benefit is excluded from the assessment district, then the assessments on properties included in that district will necessarily exceed the proportional special benefit conferred on those properties." *Town of Tiburon* at 1086.

The Court's analysis of the proportionality requirement in both *Beutz* and *Town of Tiburon* is instructive to agencies forming special districts because they will have the burden under Article XIII D Section 4 (f) of proving that the amount of the assessment

is proportional to, and no greater than, the benefits conferred on the property in the event the assessment is challenged.

In the question before us, you have asked whether a certain class of properties located within a Property and Business Improvement District ("PBID") that receive a special benefit may be excluded from having the cost of the special benefit attributed to the properties. As demonstrated in *Town of Tiburon*, the exclusion of a certain class of properties that receive a special benefit may result in altering the assessment calculation such that the class of parcels which are not excluded could be subject to increased assessment costs. If the costs of the benefits provided to excluded properties are spread among the other properties in the district, the aggregate assessment imposed on all remaining parcels would not be in proportion to the special benefit conferred on each parcel as required by the courts' analysis in *Beutz, Tiburon* and *Golden Hill*.

If, during the formation of the district, a policy decision is made to exclude a certain class of properties, one alternative to reducing the overall amount of the assessment is the utilization of a source of funds outside the district to pay the costs of the special benefits provided to the excluded properties. If an excluded property receives a special benefit, someone other than the remaining property owners assessed must pay for the benefit.

Section 36632(c) of the Property and Business Improvement District Law of 1994 provides a statutory basis to exclude properties zoned solely for residential use from assessments levied by a PBID. These properties are conclusively presumed not to benefit from the improvements and services funded through such assessments. Please note that this statutory provision has not been validated by the courts and we cannot advise you whether a legislative finding that property zoned solely for residential use receive no special benefit will pass Constitutional muster.

Conclusion:

Where a special benefit is conferred, the benefitting property must be allocated a share of the costs in proportion to the benefit received, thereby ensuring that the assessments imposed on all assessed properties within the district are calculated in the appropriate manner. Failure to adhere to this constitutional mandate could subject the assessment to challenge.