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Terms: **name(golden hill neighborhood association, inc.) and NAME(city of san diego)** (Suggest Terms for My Search | Feedback on Your Search)

*2011 Cal. App. LEXIS 1209, **

GOLDEN HILL NEIGHBORHOOD ASSOCIATION, INC., et al., Plaintiffs and Appellants, v. CITY OF SAN DIEGO, Defendant and Appellant.

D057004

COURT OF APPEAL OF CALIFORNIA, FOURTH APPELLATE DISTRICT, DIVISION ONE

2011 Cal. App. LEXIS 1209

September 22, 2011, Filed

PRIOR HISTORY: [*1]

APPEALS from a judgment of the Superior Court of San Diego County, Nos. 37-2007-00074201-CU-WM-CTL, 37-2008-00088429-CU-MC-CTL, Richard Whitney, Judge.

DISPOSITION: Vacated with directions.

CASE SUMMARY

PROCEDURAL POSTURE: Cross-appeals were taken from a judgment of the Superior Court of San Diego County (California), which, in two consolidated actions, granted mandate relief to plaintiff neighborhood association regarding the formation of a special assessment district and the initial assessments, while ruling in favor of defendant city with regard to subsequent assessments for the sidewalks, street lighting, and other improvements installed.

OVERVIEW: The city obtained a professional engineer's report to determine the amount of special benefit to be assessed. The engineer's report stated that the special benefit to each parcel was apportioned based on the parcel's linear square footage and that publicly owned parcels, except parks or designated open space areas, were assessed in the same manner as privately owned property. The engineer's report concluded that any general benefits would be minimal. The court held that the city's failure, through the engineer's report, to separate and quantify the general and special benefits provided by the assessment rendered the assessment and the formation of the district constitutionally infirm. Pursuant to Cal. Const., art. XIII D, § 4, subd. (a), even minimal general benefits had to be separated from special benefits, quantified, and deducted from the amount of the cost assessed against specially benefitting properties. Moreover, the city failed to comply with Gov. Code, § 53753, subd. (e) (2), and did not meet its burden of proof with regard to weighted voting under Cal. Const., art. XIII D, § 4, subds. (e), (f), because it did not disclose how its parks and open space areas were assessed.

OUTCOME: The court directed the trial court to vacate the judgment, to enter a new judgment granting the association's petition for writ of mandate, and to issue a writ vacating the resolution that formed the district and invalidating the assessments imposed by the district.

CORE TERMS: special benefit, parcel, engineer's report, special assessments, benefit conferred, general benefits, property owner's, weighted, open space, formation, levied,

proportional, assessment district, local government's, real property, general public, voting, street, ballot, public improvement, removal, assessment roll, proposed assessment, publicly, italics, fiscal year, cause of action, specially, invalid, zone

LEXISNEXIS® HEADNOTES

Hide

Governments > Public Improvements > Assessments

HN1 Cal. Const., art. XIII D, limits a local government's ability to levy special assessments against real property. A special assessment is a compulsory charge placed by the state upon real property within a pre-determined district, made under express legislative authority for defraying in whole or in part the expense of a permanent public improvement therein. In this regard, a special assessment is levied against real property particularly and directly benefited by a local improvement in order to pay the cost of that improvement. 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. A tax, on the other hand, is very different. Unlike a special assessment, a tax can be levied without reference to peculiar benefits to particular individuals or property. Therefore, while a special assessment may, like a special tax, be viewed in a sense as having been levied for a specific purpose, a critical distinction between the two public financing mechanisms is that a special assessment must confer a special benefit upon the property assessed beyond that conferred generally.

Governments > Public Improvements > Assessments

HN2 In passing Proposition 218 (approved 1996) and enacting Cal. Const., art. XIII D, the voters clearly sought to limit local government's ability to exact revenue under the rubric of special assessments. Cal. Const., art. 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. Cal. Const., art. XIII D, §§ 2, subd. (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. Cal. Const., art. XIII D, § 2, subd. (i). The definition specifically provides that 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.

Governments > Public Improvements > Assessments

HN3 See Cal. Const., art. XIII D, § 4, subd. (a).

Governments > Public Improvements > Assessments

HN4 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. Cal. Const., art. XIII D, § 4, subd. (a).

Governments > Public Improvements > Assessments

HN5 See Cal. Const., art. XIII D, § 4, subds. (c), (d).

Governments > Public Improvements > Assessments

HN6 A proposed assessment must be supported by a detailed engineer's report. Cal. Const., 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. Cal. Const., art. XIII D, § 4, subd. (e).

Governments > Local Governments > Elections

Governments > Public Improvements > Assessments

HN7 See Cal. Const., art. XIII D, § 4, subd. (e).

Governments > Public Improvements > Assessments

HN8 See Cal. Const., art. XIII D, § 4, subd. (f).

Administrative Law > Judicial Review > Standards of Review > General Overview

Governments > Public Improvements > Assessments

HN9 A local agency's burden of proving that an assessment meets the requirements of Cal. Const., art. XIII D, § 4, subd. (f), is to be liberally construed, and courts should exercise their independent judgment in reviewing local agency decisions that have determined whether benefits are special and whether assessments are proportional to special benefits within the meaning of Cal. Const., art. XIII D.

Administrative Law > Judicial Review > Standards of Review > De Novo Review

Governments > Local Governments > Elections

Governments > Public Improvements > Assessments

HN10 Because the validity of a special assessment imposed by a local agency is a constitutional question after the passage of Proposition 218 (approved 1996), an appellate court exercises its independent judgment in determining whether such an assessment complies with Cal. Const., art. XIII D. Accordingly, a court reviews de novo whether the vote establishing the district and special assessment met the requirements of Cal. Const., art. XIII D. Courts can invalidate elections that are conducted contrary to the provisions of Proposition 218.

Governments > Local Governments > Elections

Governments > Public Improvements > Assessments

HN11 Cal. Const., art. XIII D, § 4, subd. (e), requires that the voting on a proposed special assessment be weighted according to the proportional financial obligation of the affected property. This proportionality provision is directly tied to the proportionality requirement of Cal. Const., art. XIII D, § 4, subd. (a), which provides that the proportionate special benefit conferred upon each assessed parcel must be determined in relationship to the entire cost of a public improvement or service, and that the amount of the assessment imposed on any parcel may not exceed the reasonable cost of that proportionate special benefit. The principle that a property owner's vote on a proposed special assessment is to be weighted according to the owner's proportional share of total assessment amount — the

owner being granted one vote for each dollar assessed against his or her property — is rooted in the fundamental purpose of Proposition 218 (approved 1996) of requiring taxpayer consent for any new assessment, fee or charge levied by local government.

Governments > Local Governments > Elections

Governments > Public Improvements > Assessments

HN12 The weighted voting requirement of Proposition 218 (approved 1996), set forth in Cal. Const., art. XIII D, § 4, subd. (e), enhances taxpayer consent by giving property owners whose properties are proposed to be assessed in amounts greater than other owners' properties a proportionately greater say as to whether the proposed assessment will be instituted. The one-person, one-vote requirement rooted in the state and federal equal protection provisions do not apply to fee and assessment elections conducted by limited purpose government agencies that disproportionately affect certain property owners. An election on whether to institute a special assessment that will disproportionately affect property owners must be conducted by use of the weighted voting system prescribed by Cal. Const., art. XIII D, § 4, subd. (e).

Governments > Local Governments > Elections

Governments > Public Improvements > Assessments

HN13 Gov. Code, § 53753, which was designed to clarify the implementation of Proposition 218 (approved 1996), provides that during and after the tabulation, the assessment ballots and information used to determine the weight of each ballot shall be treated as disclosable public records, as defined in Gov. Code, § 6252, and made equally available for inspection by the proponents and the opponents of the proposed assessment. § 53753, subd. (e)(2).

Governments > Local Governments > Elections

Governments > Public Improvements > Assessments

HN14 When a local agency owns a substantial amount of property subject to a special assessment, its failure to publicly disclose the basis for the determination of the proposed assessment amounts to be charged against its parcels invites mischief because the agency could overassess its own properties without public scrutiny for the purpose of obtaining a majority affirmative vote on the special assessment. The amount of the local agency's overall assessment burden is immaterial to whether the amount assessed against, and corresponding vote weight given to, any particular parcel it owns was properly determined. What is material to that issue is whether the particular assessment amount is proportional to the special benefit conferred on the property. Simply stated, notice of the amount of an assessment is not notice of the basis for an assessment.

Civil Procedure > Pleading & Practice > Pleadings > Complaints > General Overview

Civil Procedure > Judgments > Entry of Judgments > General Overview

HN15 Failure to pray for the proper form of relief is not fatal to a complaint. A plaintiff in a contested case may secure greater relief than that requested in the prayer.

Governments > Public Improvements > Assessments

HN16 Local government must use a professional engineer's report to estimate the amount of special benefit landowners would receive from the project or service, as well as the amount of general benefit. This step is needed because Proposition 218 (approved 1996) allows local government to recoup from assessments only the proportionate share of cost to provide the special benefit. That is, if special benefits represent 50 percent of total benefits, local government may use assessments to recoup half the project or service's costs. Local governments must use other revenues to pay for any remaining costs. This limitation on the use of assessments represents a major change from the law prior to Proposition 218, when local governments could recoup from assessments the costs of providing both general and special benefits. Thus, separating the general from the special benefits of a public improvement project and estimating the quantity of each in relation to the other is essential if an assessment is to be limited to the special benefits, as required by Cal. Const., art. XIII D, § 4, subd. (a).

Governments > Public Improvements > Assessments

HN17 The general and special benefits conferred on real property by a service or improvement for which a special assessment is to be levied must be separated and quantified. Generally, this separation and quantification of general and special benefits must be accomplished by apportioning the cost of a service or improvement between the two and assessing property owners only for the portion of the cost representing special benefits. That is, the agency must determine or approximate the percentage of the total benefit conferred by the service or improvement that will be enjoyed by the general public and deduct that percentage of the total cost of the service or improvement from the special assessment levied against the specially benefitted property owners. To limit an assessment to special benefits as required by Cal. Const., art. XIII D, § 4, subd. (a), the quantity of general and special benefits must be estimated in relation to each other.

Governments > Public Improvements > Assessments

HN18 Because Cal. Const., art. XIII D, § 4, subd. (a), provides that only special benefits are assessable, even minimal general benefits must be separated from special benefits and quantified so that the percentage of the cost of services and improvements representing general benefits, however slight, can be deducted from the amount of the cost assessed against specially benefitting properties.

HEADNOTES / SYLLABUS

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SUMMARY:

CALIFORNIA OFFICIAL REPORTS SUMMARY

In two consolidated actions, the trial court granted mandate relief to a neighborhood association regarding the formation of a special assessment district and the initial assessments, while ruling in favor of the city with regard to subsequent assessments for the sidewalks, street lighting, and other improvements. The city obtained a professional

50 percent of total benefits, local government may use assessments to recoup half the project or service's costs. Local governments must use other revenues to pay for any remaining costs. This limitation on the use of assessments represents a major change from the law prior to Proposition 218, when local governments could recoup from assessments the costs of providing both general and special benefits. Thus, separating the general from the special benefits of a public improvement project and estimating the quantity of each in relation to the other is essential if an assessment is to be limited to the special benefits, as required by Cal. Const., art. XIII D, § 4, subd. (a).

CA(9) §(9) Property Taxes § 36—Special Assessments—Determining Amount of Special Benefit—Separating and Quantifying General and Special Benefits.—The general and special benefits conferred on real property by a service or improvement for which a special assessment is to be levied must be separated and quantified. Generally, this separation and quantification of general and special benefits must be accomplished by apportioning the cost of a service or improvement between the two and assessing property owners only for the portion of the cost representing special benefits. That is, the agency must determine or approximate the percentage of the total benefit conferred by the service or improvement that will be enjoyed by the general public and deduct that percentage of the total cost of the service or improvement from the special assessment levied against the specially benefitted property owners. To limit an assessment to special benefits as required by Cal. Const., art. XIII D, § 4, subd. (a), the quantity of general and special benefits must be estimated in relation to each other.

CA(10) §(10) Property Taxes § 36—Special Assessments—Determining Amount of Special Benefit—Separating and Quantifying General and Special Benefits.—An engineer's report acknowledged that services and improvements would confer some general benefit by concluding that any general benefits from the services were determined to be minimal and were more than offset by the significant other contributions the city provided to property in the special assessment district. Because Cal. Const., art. XIII D, § 4, subd. (a), provides that only special benefits are assessable, even minimal general benefits must be separated from special benefits and quantified so that the percentage of the cost of services and improvements representing general benefits, however slight, can be deducted from the amount of the cost assessed against specially benefitting properties. The city's failure, through the engineer's report, to separate and quantify the general and special benefits provided by the proposed assessment rendered the assessment and formation of the district constitutionally infirm.

[Cal. Forms of Pleading and Practice (2011) ch. 540, Taxes and Assessments, § 540.51.]

COUNSEL: Charles R. Khoury, Jr. ▼, and Gloria Sharkey for Plaintiffs and Appellants.

Jan I. Goldsmith ▼, City Attorney, and Carmen A. Brock ▼, Deputy City Attorney, for Defendant and Appellant.

JUDGES: Opinion by Irion ▼, J., with Benke, Acting P. J., and Nares, J., concurring.

OPINION BY: Irion ▼

OPINION

IRION ▼, J.—In August 2007, the City of San Diego (the City) formed a special assessment district known as the Greater Golden Hill Maintenance Assessment District (the District) for the purpose of providing various services and improvements for the benefit of properties in the District. The same month, Golden Hill Neighborhood Association, Inc.—an association of property owners in the Golden Hill area—and individual property owner John McNab¹ filed a lawsuit challenging the legality of the District and its initial assessments under article XIII D of

(e.)" (*Silicon Valley, supra*, 44 Cal.4th at p. 438.) **HN7** "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).)

The California Supreme Court noted **[*9]** in *Silicon Valley* that "[b]efore Proposition 218 was passed, courts reviewed quasi-legislative acts of local governmental agencies, such as the formation of an assessment district, under a deferential abuse of discretion standard." (*Silicon Valley, supra*, 44 Cal.4th at p. 443.) "The drafters of Proposition 218 specifically targeted this deferential standard of review for change. Article XIII D, section 4, subdivision (f), provides: **HN8** "In any legal action contesting the validity of any assessment, the burden shall be on the agency to demonstrate that the property or properties in question receive a special benefit over and above the benefits conferred on the public at large and that the amount of any contested assessment is proportional to, and no greater than, the benefits conferred on the property or properties in question." (*Id.* at p. 444.) **HN9** "A local agency's burden of proving that an assessment meets these requirements is to be liberally construed and "courts should exercise their independent judgment in reviewing local agency decisions that have determined whether benefits are special and whether assessments are proportional to special benefits within the meaning of [article XIII **[*10]** D]." (*Id.* at pp. 448, 450.)

FACTUAL AND PROCEDURAL BACKGROUND

In 2006, the Greater Golden Hill Community Development Corporation (GGHCDC) received a grant to explore the possible formation of a maintenance assessment district (MAD) in the Golden Hill area of San Diego. After holding two community meetings, GGHCDC mailed surveys to 3,550 Golden Hill property owners to gauge support for the formation of the District. Seventy-five percent of the 650 surveys returned to GGHCDC expressed support for the creation of a MAD. The City then retained the engineering firm SCI Consulting Group (SCI) to prepare the engineer's report that is required to form a MAD under the Landscaping and Lighting Act of 1972, codified at Streets and Highways Code section 22500 et seq.⁴ (Sts. & Hy. Code, §§ 22565, 22586.)

FOOTNOTES

⁴ As noted, article XIII D, section 4, subdivision (b) also requires that "[a]ll assessments shall be supported by a detailed engineer's report prepared by a registered professional engineer certified by the State of California."

In June 2007, the city council (City Council) passed a resolution stating its intention to form the District and collect assessments "to pay a prescribed portion of the costs of future improvements, **[*11]** maintenance and/or services of those items described in the Engineer's Report for [the District]." The City Council preliminarily approved SCI's engineer's report and directed the city clerk to set a date for a public hearing on the proposed formation of the District and mail "assessment ballots" to the property owners in the District area at least 45 days before the hearing. On July 30, 2007, the City Council held a public hearing on the formation of the District and counted the ballots received from property owners. Of the 1,182 valid ballots the City received, 635 were in favor of forming a MAD and 547 were opposed. The vote for each property was weighted according to the proposed amount of the assessment to be levied against the property as specified in the engineer's report and attached assessment roll. The total assessment amount of \$228,502.72 attributable to the 1,182 voting properties consisted of "yes" votes in the amount of \$123,266.56 and "no" votes in the amount of \$105,236.16. Thus, formation of a MAD was approved by 53.95 percent of the weighted vote. Based on those voting results, the City Council passed resolution No. R-302887 ordering formation of the District, approving **[*12]** the engineer's report, and confirming assessments against properties in the

6 The City requests that we take judicial notice of a document entitled "Golden Hill Community Plan." The City states that "the sole purpose the City has referenced the Community Plan in its Opening Brief ... is for factual background purposes only unrelated to the issues to be determined on appeal." The Association requests that we "authenticate and take judicial notice of color photos, showing the use and location of several parcels of City-owned property included in the [District]." We deny the City's and the Association's requests for judicial notice on the ground the materials in question are unnecessary to our resolution of the appeal. (*County of San Diego v. State of California* (2008) 164 Cal.App.4th 580, 613, fn. 29 [79 Cal. Rptr. 3d 489].)

Additionally, the City moves **[*16]** to strike various documents in the Association's respondents' appendix and all references to those documents in cross-appellant's opening brief on the grounds the documents were not part of the superior court file and are irrelevant to the issues in this appeal. We deny the motion to strike, but disregard any parts of the Association's brief and appendix containing matters that are irrelevant or outside the proper scope of the record on appeal. (See Cal. Rules of Court, rule 8.204(e)(2)(C).)

The Consolidated Actions

On August 31, 2007, the Association filed a "Petition for Peremptory Writ of Mandate and Complaint for Declaratory and Injunctive Relief" (the 2007 complaint) "to enforce the provisions of [article XIII D], and challenge the decision of ... the City Council ... to overrule protests of real property owners and approve the Assessment Engineer's Report, and approve formation of the [District]." The first cause of action of the 2007 complaint concerned 2003 amendments to San Diego Municipal Code section 65.0202 defining what constitutes an "improvement" for which a MAD may be formed. The Association alleged that most of the items listed in that definition of "improvement" **[*17]** were adopted from the Property and Business Improvement District Law of 1994 and were not intended to provide special benefit to real property under article XIII D. The Association requested an order enjoining the City from levying assessments for maintenance and improvement services listed in San Diego Municipal Code section 65.0202 and issuance of a writ of mandate commanding the City to comply with the requirements of article XIII D and Streets and Highways Code section 22573.⁷

FOOTNOTES

⁷ Streets and Highways Code section 22573 states: "The net amount to be assessed upon lands within an assessment district may be apportioned by any formula or method which fairly distributes the net amount among all assessable lots or parcels in proportion to the estimated benefits to be received by each such lot or parcel from the improvements. [¶] The determination of whether or not a lot or parcel will benefit from the improvements shall be made pursuant to the Improvement Act of 1911 (Division 7 (commencing with Section 5000))."

The second cause of action of the 2007 complaint challenged the legality of the vote that established the District, asking the trial court to "adjudicate and determine that the fair **[*18]** assessed value of all City-owned real property located within the boundaries of the [District] be reduced in weighted dollar valuation, in compliance with the requirements of Streets and Highways Code Section 22573, and [article XIII D, section 4, subdivision (a)]." In the complaint's prayer for relief, the Association requested an order dissolving the District if the trial court determined that "the weighted value of the 'yes votes' cast after fair apportionment of the City vote is less than the weighted value of the 'no votes' cast in the July 30, 2007, election."

The third cause of action alleged that the engineer's report failed to separate general from special benefits. The Association asked the court to enjoin the City from levying assessments within the District "without fairly separating general from special benefits, and assessing only for special benefit[s]."

Thus, the 2007 complaint essentially presented the following three claims: (1) that the services and improvements for which the District levied assessments against properties in the District did not provide special benefit to the properties as required by article XIII D; (2) that the District should be dissolved because [*19] the voting that established it was unlawfully weighted; and (3) that the engineer's report did not adequately separate the general benefits from the special benefits to be conferred on the District properties and imposed the assessment only for the special benefits, as required by article XIII D, section 4, subdivision (a).⁸

FOOTNOTES

⁸ In their briefing on appeal, the Association suggests that the trial court should have granted declaratory and injunctive relief invalidating the 2003 amendments to San Diego Municipal Code sections 65.0201 and 65.0202. However, the Association did not request such relief in their 2007 complaint or allege that the amendments are unconstitutional or invalid. They simply claimed that most of the items listed in the definition of "improvement" in San Diego Municipal Code section 65.0202 were adopted from the Property and Business Improvement District Law of 1994 and were not intended to provide "special benefit" to real property under article XIII D and, therefore, any assessments for such items violate article XIII D and should be enjoined.

In June 2008, the City Council approved a special assessment for the District for the 2008–2009 fiscal year, with a proposed budget [*20] of \$489,012. On July 25, 2008, the Association filed its second "Petition for Peremptory Writ of Mandate and Complaint for Declaratory and Injunctive Relief" (the 2008 complaint) challenging the City Council's approval of the 2008–2009 assessment and engineer's reports for the District and certain other MAD's. The 2008 complaint raised the following issues: (1) whether the District properly credited and applied surplus funds it collected for the 2007–2008 fiscal year to the assessment for the 2008–2009 fiscal year; (2) whether the District violated California law by not submitting any of the new and increased expenditures in its 2008–2009 budget to property owners for their vote of approval; and (3) whether the 2008 engineer's report adequately separated general benefits from special benefits to real property.

The Judgment

The judgment states: "Petitioners' First Cause of Action for Writ of Mandate in [the 2007 complaint] is granted with judgment entered thereon in favor of Petitioners." The effect of this language is unclear because the 2007 complaint did not request a writ commanding or prohibiting any specific action by the City; it simply requested writs broadly commanding the City [*21] to comply with article XIII D and various statutes. Further, the judgment does not direct the issuance of a writ or otherwise specify any particular mandamus relief, and there is no indication in the record that any writ ever issued. Consequently, it is uncertain whether the trial court intended to invalidate the *formation* of the District or simply invalidate the 2007 assessments levied by the District as being unauthorized by article XIII D.⁹

FOOTNOTES

⁹ Case law is unclear as to whether a judicial determination invalidating an initial assessment imposed in a newly formed assessment district necessarily invalidates the *formation* of the assessment district established to levy the assessment. (Compare *Silicon Valley, supra*, 44 Cal.4th at pp. 457–458 [concluding assessment was invalid for failure to

meet the requirements of Prop. 218 but not addressing the validity of the assessment district] with *Beutz v. County of Riverside* (2010) 184 Cal.App.4th 1516, 1532–1538 [109 Cal. Rptr. 3d 851] (*Beutz*) [directing entry of judgment vacating resolution creating assessment district where intended assessment was invalid for failure to separate general from special benefits conferred on assessed properties] and *Not About Water Com. v. Board of Supervisors* (2002) 95 Cal.App.4th 982, 986 [116 Cal. Rptr. 2d 526], [*22] disapproved on another point in *Silicon Valley*, at p. 450 [mandamus proceeding by property owners challenging as constitutionally flawed *the formation of an assessment district and subsequent levy of an assessment on the real property in the district*.) The City appears to interpret the judgment in favor of the Association on the mandamus cause of action of the 2007 complaint as invalidating the formation of the District and not as simply invalidating the assessments imposed for fiscal year 2007–2008. Although a judicial determination that an initial assessment imposed in a newly formed assessment district is invalid under article XIII D may invalidate formation of the assessment district, we need not decide whether an invalid initial assessment necessarily invalidates formation of the assessment district in all cases.

The trial court explained its reasoning for its decision as to some of the Association's claims in a written "Ruling" that is referenced in and attached to the judgment. Regarding its decision in favor of the Association on the cause of action for writ of mandate in the 2007 complaint, the court ruled that the City failed to show in the initial engineer's report that [*23] the 2007 assessment was based upon special benefits conferred on each parcel. The court ruled that the special benefits identified in the report were for the general enhancement of the District and did not "suffice as special benefits," and that the report did "not address special benefits as applicable to each parcel." The court further ruled that the engineer's report failed to distinguish between general benefits and special benefits conferred on the District.

As noted, the trial court ruled against the Association and in favor of the City on each of the Association's other causes of action in their consolidated pleadings. Thus, the judgment, including the attached written ruling, appears to uphold the 2008 assessment even though the defects the court found in the engineer's report in granting the Association unspecified mandamus relief (failure to show special benefit and separate general benefits from special benefit) are present in both the 2007 and 2008 engineer's reports.¹⁰

FOOTNOTES

¹⁰ It is unclear why the court ruled on any of the Association's 2008 claims on the merits, since each of them challenges the validity of the District's 2008 assessments and is therefore moot in light of the [*24] court's determination that deficiencies in the 2007 engineer's report, *which remained unchanged in the 2008 engineer's report*, rendered the District's assessments invalid under article XIII D. To the extent the court's rejection of the Association's 2008 claims can be viewed as an implied finding that the District's 2008 assessment met all of the requirements of article XIII D, the finding is inconsistent with the court's grant of unspecified mandamus relief on the grounds "the City failed to demonstrate the assessment is based upon special benefits conferred on each parcel," and failed to distinguish "between general benefits and special benefits conferred on the District."

Validity of the Vote Establishing the District

HN10 Because the validity of a special assessment imposed by a local agency is a constitutional question after the passage of Proposition 218, we exercise our independent judgment in determining whether such an assessment complies with article XIII D. (*Silicon Valley, supra*, 44 Cal.4th at pp. 448, 450.) Accordingly, we review de novo whether the vote establishing the District and special assessment met the requirements of article XIII D. As the California

Supreme Court has **[*25]** noted, "it is undisputed that courts can invalidate elections that are conducted contrary to the provisions of Proposition 218." (*Greene v. Marin County Flood Control & Water Conservation Dist.* (2010) 49 Cal.4th 277, 299 [109 Cal. Rptr. 3d 620, 231 P.3d 350] (*Greene*).)

HN11 CA(4) (4) Article XIII D, section 4, subdivision (e) requires that the voting on a proposed special assessment be weighted "according to the proportional financial obligation of the affected property." This proportionality provision of subdivision (e) is directly tied to the proportionality requirement of article XIII D, section 4, subdivision (a), which provides that the proportionate special benefit conferred upon each assessed parcel must be determined in relationship to the entire cost of a public improvement or service, and that the amount of the assessment imposed on any parcel may not exceed the reasonable cost of that proportionate special benefit.

The principle that a property owner's vote on a proposed special assessment is to be weighted according to the owner's proportional share of total assessment amount—the owner being granted one vote for each dollar assessed against his or her property—is rooted in Proposition 218's fundamental purpose of requiring **[*26]** *taxpayer consent* for any new assessment, fee or charge levied by local government. This fundamental purpose was expressly stated in the preamble to Proposition 218, which reads: "The people of the State of California hereby find and declare that Proposition 13 was intended to provide effective tax relief and to *require voter approval of tax increases*. However, local governments have subjected taxpayers to excessive tax, assessment, fee and charge increases that not only frustrate the purposes of *voter approval* for tax increases, but also threaten the economic security of all Californians and the California economy itself. This measure protects taxpayers by limiting the methods by which local governments exact revenue from taxpayers *without their consent*." (*Silicon Valley, supra*, 44 Cal.4th at p. 446, italics added, quoting Ballot Pamp., Gen. Elec. (Nov. 5, 1996) text of Prop. 218, § 2, p. 108.) Proposition 218 further stated that "[t]he provisions of this act shall be liberally construed to effectuate its purposes of limiting local government revenue and *enhancing taxpayer consent*." (*Silicon Valley, supra*, at p. 448, italics added, quoting Ballot Pamp., Gen. Elec., *supra*, text of Prop. 218, § 5, p. **[*27]** 109.)

HN12 CA(5) (5) Proposition 218's weighted voting requirement, set forth in article XIII D, section 4, subdivision (e), enhances taxpayer consent by giving property owners whose properties are proposed to be assessed in amounts greater than other owners' properties a proportionately greater say as to whether the proposed assessment will be instituted. As the California Supreme Court noted in *Greene*, "the one-person, one-vote requirement rooted in the state and federal equal protection provisions do not apply to fee and assessment elections conducted by limited purpose government agencies that *disproportionately affect certain property owners*." (*Greene, supra*, 49 Cal.4th at p. 297, fn. 8, italics added.) An election on whether to institute a special assessment that will disproportionately affect property owners must be conducted by use of the weighted voting system prescribed by article XIII D, section 4, subdivision (e).

As required by article XIII D, section 4, subdivision (e), the vote for each privately owned property in the District was weighted according to the amount of the proposed assessment to be levied against that property, as set forth in the engineer's report and attached

[*28] assessment roll. The engineer's report explained that the special benefit to each parcel was apportioned based on the parcel's linear square footage. The report also assigned each property an SFE factor based on its relative intensity of use (trip factors) in relation to a single-family home, and based 75 percent of the property's assessment amount on its SFE number and the remaining 25 percent on its street frontage. Regarding publicly owned properties, the engineer's report stated that "[e]ach publicly owned parcel, *except parks or designated open space area*, has been assessed on the same basis as other parcels within the District." (Italics added.) However, the engineer's report did not then specify an SFE for park and open space land or explain how the assessment amount and corresponding vote weighting for such properties was calculated. The assessment roll attached to the engineer's report listing all of the

the SFE and 25 percent being based on the linear front footage. The SFE is not based on linear front footage.

Because the City has not met its burden of showing that the assessment amounts charged against its park and open space parcels were proportional to the special benefits conferred on those parcels, we cannot conclude that the vote the City cast for those parcels was properly weighted under article XIII D, section 4, subdivision (e).

The Association argues the City's failure to explain the assessment amounts for the open space and park properties should result in nullification of the City's entire vote for those properties, which would reduce the weighted vote in favor of forming the District to a minority. It is undisputed that the City voted 95 properties and that 90 of them were park or open space property. The City attached a list of its properties **[*36]** in the District, with corresponding assessment amounts, to its opposition to the Association's trial brief. The Association identifies the first five properties on that list as a fire station, consisting of two parcels, with a combined assessment (rounded to the nearest dollar) of \$653; a youth center, with an assessment of \$310; a City transportation facility, with an assessment of \$7,305; and a commercial property, with an assessment of \$452.¹⁶ The sixth property, with an assessment of \$2,255, is part of Balboa Park. The remaining 89 are the properties that the City conceded at trial were open space land.

FOOTNOTES

¹⁶ The record ties the assessment amounts for these properties only to parcel numbers and street addresses for four of the properties and to a parcel number with no street address for the \$7,305 assessment that, according to the Association, is for the transportation facility. However, the City does not dispute the Association's representations regarding the character of the City-owned properties on the assessment roll as open space or developed, or representations regarding the uses of the City's developed properties. The addresses listed for most of the City's developed properties **[*37]** further supports the Association's representations.

The total 2007 assessment for the City's 95 properties was \$35,160. The total assessment for the five developed properties, excluding the Balboa Park parcel, was \$8,720. Thus, the difference between those amounts, \$26,440, was the total assessment for the City's open space properties and Balboa Park parcel. If the City's vote for the park and open space properties were entirely invalidated, the assessment amount of the votes favoring formation of the District would be reduced (in rounded numbers) from \$123,267 to \$96,827, and the vote opposing formation in the assessed amount of \$105,236 would prevail.¹⁷

FOOTNOTES

¹⁷ The Association incorrectly argues that under article XIII D, section 6, subdivision (b)(5), the City's vote for the fire station and transportation facility parcels should also be invalidated because the City failed to prove that those parcels have any function other than furnishing general governmental services. Article XIII D, section 6, subdivision (b)(5) provides in relevant part: "No fee or charge may be imposed for general governmental services including, but not limited to, police, fire, ambulance or library services, where **[*38]** the service is available to the public at large in substantially the same manner as it is to property owners." The Association misconstrues this language to mean that an assessment cannot be levied against any government-owned real property that is used to provide general governmental services such as fire or police services. However, the quoted language concerns the *purpose of fees and charges*, not the *use of public property* subject to *special assessments*.

Article XIII D, section 4, subdivision (a) states that “[p]arcels within a district that are owned or used by any [local governmental] agency ... shall not be exempt from assessment unless the agency can demonstrate by clear and convincing evidence that those publicly owned parcels in fact receive no special benefit.” Thus, governmental real property is properly assessed for services and improvements that provide special benefit to the property regardless of the property’s *use or function*. The plain meaning of the provision in article XIII D, section 6, subdivision (b)(5) prohibiting fees or charges for general governmental services is that *fees and charges* (and, arguably, assessments, which are different than fees or charges) **[*39]** may not be imposed against real property to recoup the cost of providing general governmental services. Nothing in article XIII D, section 6, subdivision (b)(5) prohibits government-owned real property used to provide general services from being included in a special assessment that meets the requirements of article XIII D, or from being included in the vote to form an assessment district.

At trial, the City argued that the SFE for its open space parcels should not be reduced to zero, and that if it were reduced from 4.6 to one (the SFE assigned to vacant lots in the engineer’s report), the vote in favor of forming the District would still prevail. It is not our place to determine the proportionate special benefit the City’s open space parcels would derive from the proposed special assessment in this case, or to determine the basis upon which the amount of the special assessment against those parcels should be calculated, as those are factual matters properly addressed by an assessment engineer. Because the administrative and trial court record does not reveal the basis for calculating the assessment amounts levied against the City’s open space property, in determining the validity **[*40]** of the election on the formation of the District, we conclude it is appropriate to eliminate those amounts from the weighted vote.

CA(7) ¶(7) As noted, in the prayer of their 2007 complaint, the Association requested an order that “the [District] be dissolved, if it appears after review that the weighted value of the ‘yes votes’ cast after fair apportionment of the City vote is less than the weighted value of the ‘no votes’ cast in the July 30, 2007, election.” We conclude that a writ of mandate vacating the resolution establishing the District is the most appropriate means of accomplishing that result. The fact that the Association did not specifically tie its request to dissolve the District to their mandamus cause of action does not preclude our directing the issuance of such a writ. (See *Valdez v. Himmelfarb* (2006) 144 Cal.App.4th 1261, 1276 [51 Cal. Rptr. 3d 195] **HN15** ¶[failure to pray for the proper form of relief is not fatal to a complaint]; *Dicker v. Bisno* (1957) 155 Cal.App.2d 554, 558 [318 P.2d 159] [plaintiff in a contested case may secure greater relief than that requested in prayer].) The Association’s prayer for mandamus relief compelling compliance with article XIII D, along with their specific request to dissolve the District, **[*41]** was sufficient for the trial court to direct the issuance of a writ vacating the resolution forming the District. Accordingly, we will direct entry of a judgment to that effect.

Separation of General Benefits from Special Benefits

The Association contends and the trial court found that the engineer’s report supporting the District assessments failed to adequately separate general benefits from special benefits as required by article XIII D. Article XIII D, section 4, subdivision (a) provides that “[o]nly special benefits are assessable, and an agency shall separate the general benefits from the special benefits conferred on a parcel.” Article XIII D does not explain what it means to separate general benefits from special benefits or provide any methodology for doing so. However, the Court of Appeal in *Beutz, supra*, 184 Cal.App.4th 1516, thoroughly explained article XIII D’s benefit-separation requirement.

In *Beutz*, the County of Riverside formed a special assessment district consisting of all residential properties in the community of Wildomar to pay the costs of maintaining landscaping in three closed public parks and one new park in the community. The landscaping assessment was part **[*42]** of a master plan to acquire and develop the parks. (*Beutz, supra*, 184

Cal.App.4th at pp. 1519, 1525.) The engineer's report for the assessment listed the special benefits that maintaining the landscaping would confer on the assessed properties. Regarding general benefits, the report stated: "It is recognized that the general public may benefit from these parks. However, the benefits to the general public will be offset by the County's payoff of the debt incurred by [the Ortega Trail Recreation and Park District], when [the County] acquired the park properties. The payoff totaled \$633,992. Additionally County Funds of approximately \$6,000,000 will be used to refurbish the parks with new playing fields, landscaping, structures, and other recreational appurtenances. Also on an annual basis the County proposes to contribute approximately \$75,000 for the purpose of funding recreational programs." (*Id.* at p. 1527.)

CA(8) ¶(8) Regarding the required separation of general and special benefits under article XIII D, the *Beutz* court quoted the following discussion from a pamphlet issued by the Legislative Analyst's Office in December 1996 explaining Proposition 218: HN16 ¶ "Local government must use a professional [*43] engineer's report to estimate the *amount* of special benefit landowners would receive from the project or service, as well as the *amount* of "general benefit." This step is needed because Proposition 218 allows local government to recoup from assessments only the proportionate share of cost to provide the special benefit. That is, if special benefits represent 50 percent of total benefits, local government may use assessments to recoup half the project or service's costs. Local governments must use other revenues to pay for any remaining costs. This limitation on the use of assessments represents a major change from the law prior to Proposition 218, when local governments could recoup from assessments the costs of providing both general and special benefits." (*Beutz, supra*, 184 Cal.App.4th at p. 1532.)

Thus, the *Beutz* court noted, "separating the general from the special benefits of a public improvement project *and* estimating the *quantity* of each in relation to the other is essential if an assessment is to be limited to the special benefits[, as required by article XIII D, section 4, subdivision (a).]" (*Beutz, supra*, 184 Cal.App.4th at p. 1532.) The *Beutz* court found that the engineer's [*44] report in that case did not comply with article XIII D, section 4, subdivision (a) because it did not "separate and quantify the general and special benefits to be realized from the implementation of the entire Master Plan. Instead, the Report assumes—without supporting evidence or analysis—that the general benefits of the Master Plan will be 'offset' by the County's expenditures of over \$6,633,992 to acquire and refurbish the parks and retire park debt, and its anticipated annual expenditures of approximately \$75,000 to fund park recreational programs. The magnitude of the County's expenditures relative to the amount of the annual assessments begs the question, however, of whether the general benefits of the parks outweigh the special benefits to district properties in the proportion the [Engineer's] Report suggests." (*Beutz*, at pp. 1532–1533.)

The *Beutz* court concluded that the engineer's report was deficient in two ways. First, it was missing "an analysis of the *quantity* or extent to which the general public may reasonably be expected to use or benefit from the parks in relation to the *quantity* or extent to which occupants of Wildomar residential properties, either in the aggregate [*45] or individually, may use or benefit from the parks." (*Beutz, supra*, 184 Cal.App.4th at p. 1533.) Second, the report was missing "an analysis ... of how or to what extent *all* Wildomar residential properties in the aggregate, or specific Wildomar residential properties in particular, will specially benefit from their occupants' anticipated use of the parks. [Citation.] It is by no means clear from the Report that occupants of Wildomar residential properties will use or benefit from the parks in a different manner, or more intensively, than persons from other communities. Nor does the Report address whether Wildomar residents who live in close proximity to one or more of the parks may reasonably be expected to use those parks just as often, over time, as Wildomar residents who live several miles away from the same parks." (*Ibid.*)

The *Beutz* court found those deficiencies in the engineer's report were of constitutional proportions because the report failed to "satisfy the County's two-part constitutional burden of demonstrating that (1) the parks [would] confer special benefits on all Wildomar residential

properties, and (2) the amount of the assessment on *each* Wildomar residential parcel **[*46]** [would be] 'proportional to, and no greater than,' the special benefits conferred on that parcel. (Art. XIII D, § 4, subd. (f).)" (*Beutz, supra*, 184 Cal.App.4th at pp. 1533–1534.) The *Beutz* court noted that if the engineer's report had "*separated and quantified* the general and special benefits of the Master Plan based on solid, credible evidence and purported to base the assessment solely on the special benefits, the substantial evidence standard of review may have applied to the Report's implicit conclusions that all Wildomar properties would specially benefit from the parks in equal measure, and that the assessment on each parcel was proportional to and no greater than those special benefits. [Citation.] The Report, however, fail[ed] to explain the nature and extent of the general and special benefits of the parks or quantify both in relation to each other based on credible, solid evidence." (*Id.* at p. 1534.)

CA(9) ¶(9) We agree with the *Beutz* court's repeated emphasis that ^{HN17} the general and special benefits conferred on real property by a service or improvement for which a special assessment is to be levied must be *separated and quantified*. Generally, this separation and quantification of general **[*47]** and special benefits must be accomplished by apportioning the cost of a service or improvement between the two and assessing property owners only for the portion of the cost representing special benefits. That is, the agency must determine or approximate the percentage of the total benefit conferred by the service or improvement that will be enjoyed by the general public and deduct that percentage of the total cost of the service or improvement from the special assessment levied against the specially benefitted property owners.¹⁸ (*Beutz, supra*, 184 Cal.App.4th at p. 1532 [noting that if special benefits represent 50 percent of total benefits, local government may use assessments to recoup half of a project's or service's costs, and that to limit an assessment to special benefits as required by art. XIII D, § 4, subd. (a), the quantity of general and special benefits must be estimated in relation to each other].)

FOOTNOTES

¹⁸ A hypothetical example of such apportionment would be that if property owners are to be specially assessed for street lighting that will provide both a special benefit for residents of the street and a general benefit to the general public using the street, a reasonable separation **[*48]** and quantification of general and special benefit would be to determine the approximate percentage of daily (or nightly) trips on the street made by the specially benefitted residents as opposed to other members of the public and recoup only that percentage of the cost of the lighting through the special assessment.

Like the engineer's report in *Beutz*, the engineer's report here did not attempt to separate and quantify the general and special benefits that the proposed services and improvements would confer. Regarding general benefits, the report stated: "The proceeds from the District will be used to fund the installation, maintenance and servicing of improvements within the District that, in the absence of the District, otherwise would not be provided. Properties in the District directly and specifically benefit from the Services, while properties outside the District do not receive the benefit of the Services funded by the District. Therefore, the assessments provide special benefit to property in the various Districts over and above the general benefits conferred by the general facilities of the City, and the Services funded by the District are determined to be exclusively of distinct **[*49]** and special benefit to properties in the District."

The statement in the engineer's report that "the assessments provide special benefit to property in the various Districts over and above the general benefits conferred by the general facilities of the City ..." does not establish that the assessments would not also provide *general* benefit in addition to special benefit. As the *Beutz* court noted, "[the] courts of this state have long recognized ... that virtually all public improvement projects provide general benefits." (*Beutz, supra*, 184 Cal.App.4th at p. 1531.) Here, the statement in the engineer's report that "*properties* outside the District do not receive the benefit of the Services funded by the District" (italics added) does not establish that the *general public* within and outside the District

