

September 16, 1999

REPORT TO THE HONORABLE  
MAYOR AND CITY COUNCIL

*Howard Jarvis Taxpayers Assn., et al. v. City of San Diego*  
San Diego Superior Court Case No. 712071; Fourth District Court of Appeal  
Case No. D031348; Supreme Court Case No. S080184

Plaintiffs Howard Jarvis Taxpayers Association and four small business owners in Pacific Beach challenged the validity of the Pacific Beach Business Improvement District, established by ordinance of the San Diego City Council on January 13, 1997, on the grounds that the assessments levied by that ordinance do not comply with California Constitution, Articles XIIC and XIID (formerly Proposition 218, the “Right to Vote on Taxes Act”).

Business Improvement Districts [BIDs] are designated geographic areas formed to permit businesses within the district to assess themselves to improve business conditions in specified community commercial areas. These districts are authorized by the “Parking and Business Improvement Area Law of 1989” (Streets and Highways Code sections 36500-36551, “the 1989 Act”) for the stated purpose of promoting economic revitalization of older commercial areas and to improve the scenic, recreational and cultural attraction of those areas. There are currently sixteen such districts in the City. The San Diego BID program is the largest in the state and one of the most active in the nation. Operated by the Office of Small Business, the program has been highly successful in revitalizing older neighborhood commercial districts across the City.

BID revenues may be used for a wide variety of programs and improvements ranging from establishing farmer’s markets to installing street lighting and removing graffiti. In addition to focusing on business development and ongoing physical improvements, BIDs help organize some of the most popular special events in San Diego, including the *Adams Avenue Street Fair*, Old Town’s *Latin American Festival*, the Gaslamp Quarter’s *Taste of the Gaslamp*, and Hillcrest’s *City Fest*.

BID assessments are levied upon business operators in these districts for improvements and activities that benefit the businesses, not as taxes for the general benefit of the City. Plaintiffs' challenge was based primarily on the theory that Proposition 218 had established a constitutional definition of "assessment" which is limited to assessments on property, and that therefore the 1989 Act was, in effect, repealed.

The City filed a motion for summary judgment in Superior Court on the grounds that BID assessments are not "property-related assessments, fees or charges" under Proposition 218 because they are assessed upon business operators without regard to property ownership and that there is no constitutional limitation on the definition of assessment due to the plain language of the measure as drafted by Plaintiff Taxpayers Association. The City's motion was granted by the Honorable S. Charles Wickersham. Plaintiffs appealed arguing, among other things, that BID assessments were the "poster child" for Proposition 218. Because of statewide interest in the challenge, the League of California of California Cities sponsored amicus briefing at the Court of Appeal in which eighty-five cities joined in support of San Diego's position.

The Fourth District Court of Appeal, in an opinion published at 72 Cal. App. 4<sup>th</sup> 230 (1999), unanimously affirmed the ruling of the trial court holding that BIDs formed under the 1989 Act are not governed by Proposition 218. Plaintiffs petitioned the California Supreme Court for review. The Petition was denied by the Supreme Court on August 18, 1999, making the opinion of the Court of Appeal final.

Deputy City Attorney James M. Chapin handled the case on behalf of the City of San Diego at the trial court, court of appeal, and California Supreme Court.

Respectfully submitted,

CASEY  
GWINN  
City Attorney

JMC:vtc:Civ.(043.1)  
RC-99-11