

## CALIFORNIA SUPREME COURT CASE AFFECTS LOCAL SPECIAL ASSESSMENT DISTRICTS



### Court Interprets Proposition 218

Proposition 13 was a law designed chiefly to protect property taxpayers. It puts limits on how high and how fast property taxes may increase, and requires a vote of the people on new local taxes. After the enactment of Proposition 13, government agencies looked for ways to raise revenues while avoiding the restrictions of Proposition 13. They began to use assessment districts, which had been historically used to fund capital improvements that directly benefited property, to raise revenue through assessment fees. An example of assessment districts are the Lighting and Landscape Assessment Districts (LLADs) that are scattered throughout El Dorado Hills. Over time, local agencies, such as the El Dorado Hills Community Services District, used these assessments to collect the equivalent of property taxes that avoided Proposition 13's restrictions.

In 1996 California voters passed Proposition 218, which changed the law governing special assessments. Proposition 218 made special assessments, which are distinct from property taxes, subject to the general requirement that no new tax may be imposed without a vote of the electorate. Proposition 218 also added article XIII D to the state constitution, which requires that a local agency that proposes to levy an assessment must identify the property parcels that will specifically benefit, and the proportional benefit they will receive.

In the 2008 case of Silicon Valley Taxpayers Association, Inc. v. Santa Clara County Open Space Authority, the California Su-

preme Court declared that Proposition 218 changed the law governing assessments in several respects.

In the Silicon Valley Taxpayers case, the Court first decided that Proposition 218 shifted to the local agency that assesses them the burden of proof that assessments are valid. Then the Court found that the Open Space Authority had not met its burden of proof and the assessments were fatally deficient in at least two respects: (a) the assessments did not meet the new requirements that they be limited to the special benefits enjoyed by the assessed properties; and (b) the assessments did not meet the new requirements that the amounts assessed to property parcels be proportional to the special benefits conferred on the assessed properties.

The Court's opinion reversed a 1992 pre-Proposition 218 Court decision that had applied a deferential standard of review to affirm the validity of a local park maintenance assessment even though some of the assessed parcels were 27 miles from the parks. That earlier decision had applied the traditional standard of review, which presumed that legislative approval of assessments was valid and put the burden on the challenger to show that the record clearly did not support the underlying determinations of benefit and proportionality. That earlier decision rejected arguments that the burden of proof should be on the government to demonstrate the validity of the assessments, and found no basis for changing the traditional burden of proof and deference to assessments as legislative enactments.

Now, however, the Court emphasized that Article XIII D, section 4, of the California Constitution specifically places the burden of proof on the government to demonstrate that (1) the assessed property receives a "special benefit" over and above the benefits conferred on the public at large; and (2) the amount of the assessment is "proportional to,



### EDH CABLE TV RATES TO RISE IN JANUARY

Comcast is raising their cable TV prices in El Dorado Hills in January, an annual event the company says reflects higher programming costs and new services for their customers.

The rate increases, as much as ten percent for some popular Comcast packages, could alienate customers and possibly catch the attention of regulators in Washington, D.C. Federal Communications Commission Chairman Kevin Martin has been leaning toward some restrictions on cable, perhaps requiring the companies to sell customers their favorite cable channels on an a la carte basis, rather than as part of a big package.

Beginning in January, Comcast's standard cable monthly rate will climb 6.9 percent to \$57.95. Digital Classic (including standard cable) will go from \$69.15 to \$74.90 and the monthly fee for using a high-definition digital video recorder, or DVR, is increasing from \$13.95 to \$15.95 a month.

A Comcast spokesman said the increases reflect new products and services that Comcast is offering, including more high-definition channels and the doubling of its on-demand offerings. In addition, he said, the fees for its Internet and phone service will remain unchanged.

There is no federal, state or local regulation of cable rates, though increased competition might have moderated the rate increases. As satellite carriers and phone companies such as SureWest and AT&T enter the market, cable providers will have to be a bit more careful about how much they charge. ~





## CSD LLAD THREATENED WITH SERVICE CUTS

A recent article in the Village Life newspaper reported that the El Dorado Community Services District has given the residents of the Green Valley Hills Lighting and Landscape Assessment District (LLAD) an ultimatum: either double your annual assessment, or receive less services.

The Green Valley Hills LLAD includes landscaping, fencing, and four streetlights in the neighborhood. The landscaping and fencing that is in the LLAD extends 3,900 feet along Green Valley Road, Salmon Falls Road, and Lakehills Drive. According to CSD, the LLAD property is costing more than \$33,000.00 a year to maintain, more than its current annual property assessments are bringing in. Each Green Valley Hills LLAD parcel is currently paying \$76.90 a year to its LLAD, an amount the homeowners approved some years ago. The homeowners do not own the roadside property being maintained, as it belongs to either the CSD or to the county as road right-of-way.

CSD officials plan to meet with the Green Valley Hills residents on December 9 at the Francisco Oaks Elementary School multipurpose room to discuss a vote to increase their LLAD assessment by about \$75.00 per parcel so as to generate another \$16,500.00 per year to end their LLAD's funding shortfall. A vote on whether residents wish to increase their assessments is proposed for January 2009. CSD officials warned residents that their LLAD services could be curtailed if increased funding is not forthcoming.

Under Proposition 218, any proposed increase in the assessment must be voted on by the residents who would be subject to the increase, and each parcel has one vote if the assessment is equal for each parcel. The assessment increase passes only if there is not a negative majority of the votes cast. That means that when the votes are tabulated, the assessment increase is rejected only if the number of ballots cast in opposition to the increase exceeds the number of ballots cast favoring the increase.

For example, there are 222 voting parcels in the Green Valley Hills LLAD. If the CSD receives a total of 41 ballots, and 20 ballots are against the increase and 21 ballots are for the increase, all 222 parcels will pay the increased assessment.

According to the CSD, they have spent \$177,285 of general fund money subsidizing LLAD services in Green Valley Hills and other El Dorado Hills neighborhoods.

The Village Life article noted that the assessment amounts for other LLAD neighborhoods are also under review. For instance, an outreach meeting is scheduled for January 6, 2009, by CSD officials for residents of the Bass Lake Village LLAD, at the Oak Knoll Park Community Center. ~

## CALIFORNIA COURT LLAD DECISION *(continued)*

and no greater than, the benefits conferred" on the assessed properties. The Court concluded that these provisions not only impose new substantive burdens of proof on agencies seeking to impose assessments, but also require a new, less-deferential standard of judicial review, stating that: "Because Proposition 218's underlying purpose was to limit government's power to exact revenue and to curtail the deference that had been traditionally accorded legislative enactments on fees, assessments, and charges, a more rigorous standard of review is warranted."

The Court explained that Proposition 218 had made assessments, and the limitations thereon, a matter of constitutional import, and that judicial deference to statutory assessments based on separation of powers notions was no longer appropriate. Instead, the Court declared that the determination of the validity of assessments is subject to a court's independent judgment. The independent judgment standard of review is ordinarily reserved for governmental action deemed to affect fundamental vested rights requiring more rigorous judicial review.

The Court expressly rejected the more common substantial evidence standard of review typically applied for most local government decisions, as being too deferential to satisfy the constitutional mandate.

This decision will likely trigger immediate review of other local assessments and fees that may suffer from similar deficiencies. It provides an incentive to local agencies funding public programs by means of assessments to more clearly distinguish special benefits, which may be funded through assessments, from more general benefits shared by the community at large. The new higher standard of judicial review and shifted burden

of proof may result in more detailed assessment engineer's reports that include more evidence and analysis of special benefits, and rationalization for proposed allocations of program costs through proportionality analysis. Finally, the opinion may serve as a warning to agencies which may occasionally be tempted to "work backwards" by figuring out how to spend the proceeds of assessments or fees only after first seeing how much revenue they might raise from the tax or fee payers.

To taxpayers being assessed, the pertinent issue may not be so much the question of whether they receive benefits, but whether they are being assessed proportionately for the benefits. ~



## EDH CSD TO SPEND \$3.2 MILLION ON NEW FACILITIES

Some El Dorado Hills residents, many of whom came to support their favorite park project, got to participate in a park-planning session in November, evidently helping to decide where the CSD would spend \$3.2 million that the CSD has set aside for capital projects, including an option to spend over six million dollars if the residents wished to float bonds to pay for parks.

At the end of workshop, the proposed Lake Forest Park, which had many supporters in attendance, came out the big winner, with the proposed Windsor Point Park just behind. Lake Forest has a \$1.4 million phase one budget and Windsor Point weighs in at \$600,000.

Both the parks would be maintained by a prospective lighting and landscape district. The last attempt to establish a LLAD failed because Lake Forest and Windsor Point were bundled together, resulting in an inordinately high annual assessment for some residents.

The \$4.5 million Harvard Way swimming pool replacement was the only other project to get a first place vote. The power line trail got three mentions. It was pointed out that the community pool is reaching the end of its life, and will cost up to \$500,000

*(continued on page 4)*

# THE PRESIDENT'S LETTER



Hello Everyone,

It seems like the political campaign season dragged on forever. This was the longest campaign season that I can remember. Then just when I thought it was all over, was I surprised!

I forgot the old saying, "It isn't over until it's over." First, in my November letter I congratulated Jack Sieglock for winning the Tenth Assembly District. Wrong! On the first day of December, Alyson Huber was declared the come-from-behind winner over Sieglock. So I'll have to congratulate Alyson, and say "Sorry" to Jack.

Second, the neck-to-neck Fourth Congressional District race between Tom McClintock and Charley Brown was not decided until about the same time, with McClintock finally pulling ahead to win. Thank goodness, the waiting is now over.

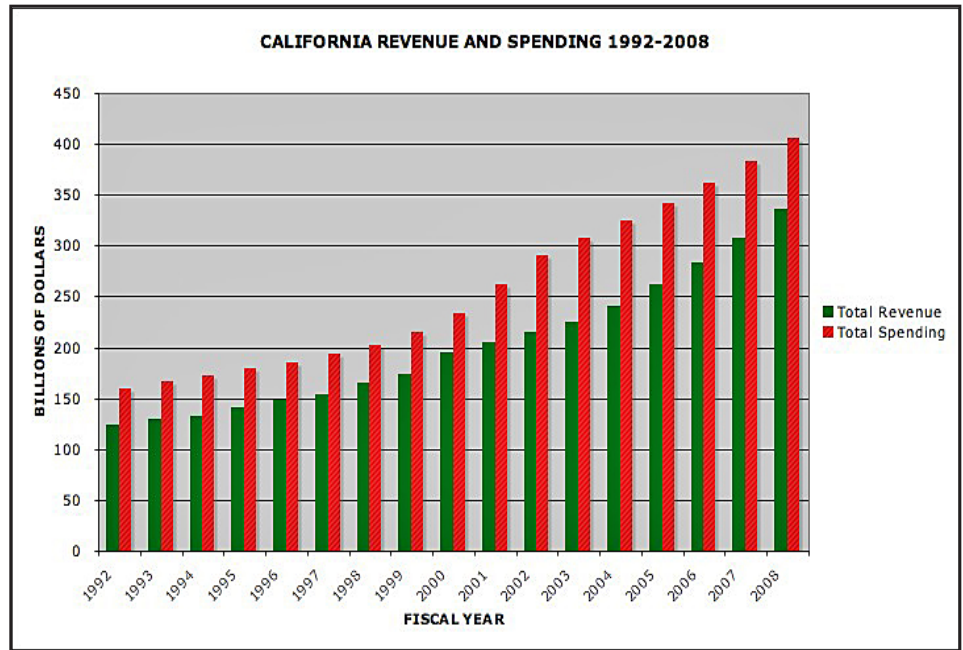
As if winter was waiting, too, it didn't really get cold until December. Though our redbud trees lost all their leaves last month, our pear trees and grape vines seemed to hang onto their leaves as if reluctant to drop them. That all changed in a hurry this week, as their leaves turned yellow and red, and prepared to drop like big colored snowflakes.

Of course, Thanksgiving was the signal to put up the Christmas decorations, and Fran and I spent the whole Sunday after Thanksgiving stringing lights and putting up the Christmas tree, not to mention getting out all the decorations to put around the house. Now we really have the Christmas spirit, and it seems like Christmas will be here before we know it.

We hope that everyone has a very Merry Christmas, and a Happy and Prosperous New Year.

*John E. Thomson*

President



The California State Budget Crisis: It needs no story, this graph tells it all.



## SECOND OAK KNOLL PARK PLANNING MEETING SCHEDULED

In October, more than forty residents of the Hills of El Dorado and Woodridge filled the meeting room at Oak Knoll Park for a lively discussion with representatives of the El Dorado Hills Community Services District (CSD) regarding possible future plans for the park.

At that meeting there emerged little consensus on how to spend the \$175,000.00 that the CSD says is in the building reserve for the park. However, most attendees were unified in their complaints about conditions surrounding the park.

A number of residents complained at that time about the disparity between the assessments paid by Hill of El Dorado and Woodridge properties for the Bass Lake Village Lighting and Landscape Assessment District, which funds Oak Knoll Park. Hills of El Dorado residents pay \$99.00 a year,

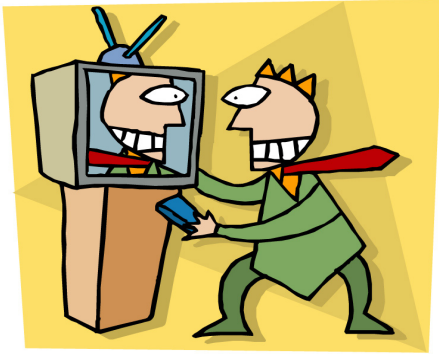
while Woodridge residents pay \$299.00, almost triple that amount.

The second Oak Knoll Park Re-design Workshop is scheduled for Wednesday, December 17, 2008 at 6:00 P.M. in the Oak Knoll Clubhouse.

At the upcoming meeting, CSD staff will share the results of the first workshop and will show how they are reflected in some conceptual design alternatives. The staff will also share budget information, cost estimates for possible improvements, and will ask the community to develop a consensus plan that can be presented to the El Dorado Hills Community Service District Board of Directors for adoption.

The CSD will send out a postcard invitation in early December as a reminder of the meeting. If anyone has have any questions, or would like additional information, they may contact CSD Planning Director Diana Hillyer at 916-614-3210 or email her at dhillyer@edhcsd.org, or call Kent Malonson, Associate Planner, at 916-643-4362 or email Kent at kmalonson@edhcsd.org. ~





## DIGITAL TV CONVERSION STILL BAFFLES SOME

There's still a lot of mystery surrounding the upcoming February 2009 switch from analog to digital broadcasts in the TV world.

Here's the scoop: If you are among the 88% of people who get TV via cable or satellite, it is irrelevant to you that analog TV signals are going away next year. However, if you are one of the 12% who uses a TV antenna or rabbit ears, listen up: Your antenna or rabbit ears will no longer work as they did come February 2009. You can keep your old TV, but you'll need to get a converter box.

A consumer group recently sent secret shoppers out to electronics stores in about a dozen states seeking information about the digital TV switch. More than 80% of the time they were given false information by sales associates, who then tried to sell them an expensive multi-function box that would have been useless to them. Almost half of the time they also got wrong information about the time table for the conversion.

Statistics from other organizations show that about 4 in 10 Americans haven't heard a word about the coming switch. We encourage everyone to help out elderly relatives who may still be getting TV via antennas or rabbit ears. ~

## CSD SPENDING *(continued)*

in maintenance expenses before next summer. The CSD pavilion remodel and repairs to the Harvard Way parking lot were each mentioned twice. A couple of groups asked for more turf fields and tennis courts, suggesting that some existing park projects could be simplified to meet those needs and might cost less. One group suggested that a BMX park be added to the picnic and play area that would be located in the heart of the Community Park. The possibility of acquiring the former executive golf course, which is not currently for sale, was appeal-

ing to all the groups, despite its estimated \$5 million cost.

The CSD board will consider the recommendations on park priorities, and has promised a decision on borrowing at their December 11 board meeting. Board president Bill Vandegrift is on record as being disinclined to borrow funds, or to spend outside of the CSD's financial ability.

Some observers are wondering if it is prudent for the CSD to be contemplating spending millions of dollars on new facilities when public entities are facing drastic budget shortfalls due to the ongoing housing and financial crisis. Money is money, regardless of what the accountants may call it, and the CSD may need that cash for ongoing operations sometime in the near future. ~



### *A Christmas Tale*

*So now is come our joyful feast,  
Let every man be jolly;  
Each room with ivy leaves is dressed,  
And every post with holly.  
Though some churls at our mirth repine,  
Round your foreheads garlands twine,  
Drown sorrow in a cup of wine,  
And let us all be merry.  
Now all our neighbors' chimneys smoke,  
And Christmas blocks are burning;  
Their ovens they with baked meats choke,  
And all their spits are turning.  
Without the door let sorrow lie,  
And if for cold it hap to die,  
We'll bury it in a Christmas pie,  
And evermore be merry.*

- *George Wither*

## BLAC ELECTS OFFICERS, PLANS EVENTS FOR 2009

The December 6th meeting of Bass Lake Action Committee was the scene for the election of officers for 2009 and a festive party to celebrate the Christmas season.

The officers-elect for 2009 are: president, John Thomson; vice-president, Kathy Prevost, treasurer, Tasha Boutselis-Camacho; secretary, Hal Erpenbeck; and director-at-large, Fran Thomson.

The Christmas party that followed the meeting was enlivened by the attendance of El Dorado County supervisor-elect John Knight and his lovely wife Georgie.

The January 5, 2009, BLAC meeting will be held at 7:00 P.M. at the home of Tasha Boutselis-Camacho and will feature new El Dorado Hills Community Services District board members Noelle Mattlock and Guy Gertsch. In February, members and guests will hear from new El Dorado County supervisors John Knight (District 1) and Ray Nutting (District 2).

Contact Kathy Prevost at 530-672-6836 for further information. ~

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John E. Thomson, Ph.D.  
President and Editor  
doctorjet@basslakeaction.org  
530-677-3039

For additional information  
see our website [basslakeaction.org](http://basslakeaction.org)  
or contact

Vice President Kathy Prevost  
[kathyp@basslakeaction.org](mailto:kathyp@basslakeaction.org)  
530-672-6836

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Bass Lake Action Committee  
501 Kirkwood Court  
El Dorado Hills, CA 95762