Blogs
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California Land Use & Development Law Report

Citywide Community Facilities District to fund additional municipal services was valid under the Mello-Roos Act

A Mello-Roos tax on new residential development to finance a wide variety of governmental services was a valid special tax, not a general tax to fund existing municipal services. *Building Industry Association of the Bay Area v. City of San Ramon* 4 Cal.App.5th 62 (2016) An analysis performed by the City of San Ramon showed that the cost of providing services to new residential development exceeded the revenue generated by the development. The City accordingly conditioned its approval of a new development project on the developer providing a funding mechanism to cover the shortfall. The developer petitioned the City to create a taxing district under the Mello-Roos Community Facilities Act of 1982 to finance police, park and recreational facilities, open space facilities, landscaping facilities, street and street lighting facilities, flood and storm protection facilities and storm water treatment facilities. The City formed a Mello-Roos District comprised of the developer's property and a "future annexation area" that was essentially coextensive with the City limits. The City also authorized, and the developer as landowner voted to approve, a special tax to fund services for its project. The Building Industry Association of the Bay Area filed suit challenging the validity of the tax. It argued that the tax did not provide for "additional services" as required by the statute, but merely used a different mechanism to fund services the city was already providing. It also contended that because the tax funded such a broad array of governmental services, it was effectively a general tax to fund municipal services, was therefore improper because the district was a "special purpose district" under Proposition 218, and as such had no power to levy general taxes. The court of appeal upheld the tax, finding it in compliance with the requirements of the Act. Government. Code §53313(g) provides that a special tax approved by a landowner vote may only finance services "to the extent that they are in addition to those provided in the territory of the district before the district was created [and] shall not supplant services already available within that territory when the district was created." The court found that the tax in question satisfied this requirement since services that met an increased demand would necessarily be "in addition to" the services previously provided. Contrary to the Association's argument, they did not "supplant" the services previously available because they added to rather than replacing those services. The court found that other provisions of the Mello-Roos Act supported this conclusion. Section 53311.5 states that the purpose of the Act is to finance facilities and services in developing areas, which were the very situations likely to lead to increased demand for the services authorized under the Act. The court also pointed to Section 53326(b), which references the financing of services needed "to meet increased demands placed upon local agencies as the result of development or rehabilitation occurring in the district." Services financed by the San Ramon tax, the court concluded, fell squarely within the "additional services" referenced in the Act. The court also concluded that the tax was a special (and not general) tax because it was imposed to fund specified facilities and services, all of which were expressly authorized under the Mello-Roos Act. As such, because the tax was adopted in compliance with the Mello-Roos Act, it met the requirements of the California Constitution.

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