SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

TAXPAYERS FOR ACCOUNTABLE SCHOOL BOND SPENDING, a California Nonprofit Fictitious Business Entity,

Plaintiff and Petitioner,

v.

SAN DIEGO UNIFIED SCHOOL DISTRICT; and DOES ONE through TWENTY, inclusive,

Defendants and Respondents.

Case No. 37-2011-00085714-CU-WM-CTL

STATEMENT OF DECISION - Counts 1, 3 and 4
Date : September 30, 2011
Time : 1:30 p.m.
Dept : 72
Judge : Timothy B. Taylor

Complaint Filed: February 10, 2011

California Environmental Quality Act "CEQA"

Exempt from filing fees pursuant to Gov. Code, § 6103.

1. **Overview of the Litigation/Procedural Posture.**

In this case, petitioner seeks declaratory and injunctive relief and a writ of mandate requiring the District to set aside certain decisions it made on January 11, 2011 [AR 1:1; 4:54-55] relating to the Hoover High School Athletic Facilities Upgrade Project ("Project"). Petitioner contends the District determined to misspend Prop S bond monies, committed zoning violations, and violated various other provisions of law when it made the January 11 decisions and an additional decision in May of 2011.

The amended petition alleged four causes of action, among which was the CEQA claim, the second cause of action. The CEQA claim came on for hearing on August 26, 2011, at 2:30 p.m. The court heard extensive oral argument, following which the second cause of action was submitted. The court had published a detailed tentative ruling in advance of the hearing, and on August 29, 2011, filed and served its ruling via minute order. On September 6, petitioner filed its Request for Statement of Decision and statement of additional controverted issues. On September 8, the court served its Proposed SOD, and filed the SOD on September 27.

On August 15, 2011, petitioner filed its moving papers as to the remaining three counts of the amended petition. Respondent filed its opposition on September 16, and petitioner filed its reply on September 23. The court has reviewed the foregoing papers, and heard lengthy argument on September 30. On October 3, the court issued its Tentative Decision under CCP section 632 and CRC 3.1590 as to the first, third and fourth causes of action. Petitioner filed a Notice of Additional Controverted Issues Proposed to be Contained in the Statement of Decision on October 11, and on October 12 the court ordered Respondent to prepare a proposed Statement of Decision. Respondent did so on October 25, 2011. This is the court's Statement of Decision.

CCP section 632 provides:

> "In superior courts, upon the trial of a question of fact by the court, written findings of fact and conclusions of law shall not be required. The court shall issue a statement of decision explaining the factual and legal basis for its decision as to each of the principal controverted issues at trial upon the request of any party appearing at the trial. . . ."

"[I]t is settled that the trial court need not, in a statement [of] decision, 'address all the

legal and factual issues raised by the parties.' [Citation.] It 'is required only to set out ultimate findings rather than evidentiary ones.' [Citation.] ' "[U]ltimate fact[]" ' is a slippery term, but in general it refers to a core fact, such as an element of a claim or defense, without which the claim or defense must fail. [Citation.] It is distinguished conceptually from 'evidentiary facts' and 'conclusions of law.' [Citation.]" *Yield Dynamics, Inc. v. TEA Systems Corp.* (2007) 154 Cal.App.4th 547, 559. "The trial court is not required to make an express finding of fact on every factual matter controverted at trial, where the statement of decision sufficiently disposes of all the basic issues in the case." *Bauer v. Bauer* (1996) 46 Cal.App.4th 1106, 1118. A specific finding on a disputed factual issue is not required when that finding may necessarily be implied from a general finding. *St. Julian v. Financial Indemnity Co.* (1969) 273 Cal.App.2d 185, 194.

2. **Standards Applicable to First Cause of Action for Waste of Public Money.**

Petitioner bases its first cause of action on CCP section 526a (8/15/11 moving papers, page 4). Section 526a provides in part: "An action to obtain a judgment, restraining and preventing any illegal expenditure of, waste of, or injury to, the estate, funds, or other property of a [local agency], may be maintained against any officer thereof, or any agent, or other person, acting [o]n its behalf, either by a citizen resident therein, or by a corporation, who is assessed for and is liable to pay, or, within one year before the commencement of the action, has paid, a tax therein." The purpose of section 526a "is to permit a large body of persons to challenge wasteful government action that otherwise would go unchallenged because of the standing requirement." *Waste Management of Alameda County, Inc. v. County of Alameda* (2000) 79 Cal.App.4th 1223, 1240. "The essence of a taxpayer action is an illegal or wasteful expenditure of public funds or damage to public property. It must involve an actual or threatened expenditure of public funds. General allegations, innuendo, and legal conclusions are not sufficient; rather, the plaintiff must cite specific facts and reasons for a belief that some illegal expenditure or injury to the public fisc is occurring or will occur.' 4 Witkin, Cal. Procedure (2002 supp.) Pleading, § 144, pp. 58-59." *McLeod v. Vista Unified Sch. Dist.*, 158 Cal. App. 4th 1156, 1164-65 (4th DCA Div. 1 2008).

Although neither the Amended Petition nor the moving papers specifically allege it, petitioner apparently also bases its claim on Education Code section 15284, added by Proposition

39, which allows a taxpayer within a school district to bring an action, dubbed a "School Bond Waste Prevention Action" [Ed.Code, § 15284, subd. (e)], "to obtain an order restraining and preventing any expenditure of funds received by a school district ... through the sale of bonds authorized by [Proposition 39]." [Ed.Code, § 15284, subd. (a).] (Reply Brief at 4:15) As with Code of Civil Procedure section 526a, an action brought under Education Code section 15284 takes special precedence over all other civil matters except those granted equal precedence by law. [Ed. Code, § 15284, subd. (b).] "The rights, remedies, or penalties established by [Education Code section 15284] are cumulative to the rights, remedies, or penalties established under other laws, including subdivision (a) of Section 526 ... of the Code of Civil Procedure." [Ed.Code, § 15284, subd. (c).] *McLeod, supra*, 158 Cal. App. 4th at 1171.

3. **Ruling on First Cause of Action.**

The court finds that it need not resolve the District's argument regarding the petitioner's lack of standing and the absence of a proper defendant (Oppo. Br. at 3-5), or petitioner's somewhat muddled rejoinder to these arguments (Reply at parts D, E and F). This is so because on the merits, the first cause of action fails.

The case most closely in point (and cited on pp. 6 and 8 of the moving papers and pp. 3 and 6 of the Reply brief) is *Committee for Responsible School Expansion v. Hermosa Beach City School Dist.*, 142 Cal. App. 4th 1178 (2006). There, the petitioner appealed from a judgment entered following the denial of its petition for writ of mandate seeking to enjoin defendant and respondent the Hermosa Beach School District from expending school bond money to construct a gymnasium. Appellant contended that the "California Constitution prohibits the expenditure because construction of a "gymnasium" was not among the "list of the specific school facilities projects to be funded" in the bond ballot measure approved by the voters. (See Cal. Const., art. XIIIA, § 1, subd. (b)(3)(B).)" 142 Cal. App. 4th at 1181.

The court of Appeal found "no merit to this contention. The School District satisfied the Constitution's accountability requirements by preparing and making available the required list of projects, which included a gymnasium. Neither the state Constitution nor the Education Code requires that the list of specific school facilities projects to be funded through a bond measure be

included on the ballot." *Id.*

The similarities between this case and *Hermosa Beach* merit significant quotation of the Second District's opinion:

> "'The usual method of funding new school construction in California has been for school districts to obtain voter approval for the issuance of general obligation bonds.... The bonds are repaid by an annual levy of an ad valorem tax on real (and certain personal) property located within the area of the district.' [Citation.]" (*San Lorenzo*, 139 Cal.App.4th at p. 1395, 44 Cal.Rptr.3d 128.) School bond financing is governed by various provisions of law—some constitutional and some statutory. (*Ibid.*)
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> Proposition 39, also known as the "Smaller Classes, Safer Schools, and Financial Accountability Act," amended the California Constitution in November 2000 to create an exception to the one percent limit on ad valorem taxes on real property and to reduce from two thirds to 55 percent the number of voters required to approve any bonded indebtedness proposed to be incurred by a school district for the "construction, reconstruction, rehabilitation, or replacement of school facilities." (Prop. 39, § 4, as approved by voters, Gen. Elec. (Nov. 7, 2000); Cal. Const., art. XIIIA, § 1, subd. (b)(3); see also *Ridgecrest Charter School v. Sierra Sands Unified School Dist.* (2005) 130 Cal.App.4th 986, 993, 30 Cal.Rptr.3d 648.)
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> Because the resolution of this matter hinges in large part on the language of the relevant constitutional provision, we quote it at length. California Constitution article XIIIA, section 1, subdivision (b) provides that the one percent limitation on any ad valorem tax on real property "shall not apply to ad valorem taxes or special assessments to pay the interest and redemption charges on any of the following: [¶] ... [¶] (3) Bonded indebtedness incurred by a school district, community college district, or county office of education for the construction, reconstruction, rehabilitation, or replacement of school facilities, including the furnishing and equipping of school facilities, or the acquisition or lease of real property for school facilities, approved by 55 percent of the voters of the district or county, as appropriate, voting on the proposition on or after the effective date of the measure adding this paragraph. *This paragraph shall apply only if the proposition approved by the voters and resulting in the bonded indebtedness includes all of the following accountability requirements:* [¶] (A) A requirement that the proceeds from the sale of the bonds be used only for the purposes specified in Article XIIIA, Section 1(b)(3), and not for any other purpose, including teacher and administrator salaries and other school operating expenses. [¶] (B) *A list of the specific school facilities projects to be funded and certification that the school district board, community college board, or county office of education has evaluated safety, class size reduction, and information technology needs in developing that list.* [¶] (C) A requirement that the school district board, community college board, or county office of education conduct an annual, independent performance audit to ensure that the funds have been expended only

> on the specific projects listed. [¶] (D) A requirement that the school district board, community college board, or county office of education conduct an annual, independent financial audit of the proceeds from the sale of the bonds until all of those proceeds have been expended for the school facilities projects." (Italics added.)
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> Legislation implementing Proposition 39 is codified in sections 15264 through 15284 of the Education Code. (*San Lorenzo, supra*, 139 Cal.App.4th at p. 1396, fn. 9, 44 Cal.Rptr.3d 128.) Pertinent here, Education Code section 15272 provides: "In addition to the ballot requirements of Section 15122 ... for bond measures pursuant to this chapter, the ballot shall also be printed with a statement that the board will appoint a citizens' oversight committee and conduct annual independent audits to assure that funds are spent only on school and classroom improvements and for no other purposes." (Ed.Code, § 15272.) Education Code section 15122, which remained unchanged after the enactment of Proposition 39, specifies the form of the ballot for a bond election: "The words to appear upon the ballots shall be 'Bonds—Yes' and 'Bonds—No,' or words of similar import. A brief statement of the proposition, setting forth the amount of the bonds to be voted upon, the maximum rate of interest, and the purposes for which the proceeds of the sale of the bonds are to be used shall be printed upon the ballot. No defect in the statement other than in the statement of the amount of the bonds to be authorized shall invalidate the bonds election." (Ed.Code, § 15122.)

Comm. for Responsible Sch. Expansion v. Hermosa Beach City Sch. Dist., supra, 142 Cal. App. 4th at 1184-86 (*italic* text in original). After providing this overview of the school funding mechanism at issue in that (and this) case, the court went on to set forth the chronology of events relevant to that case and to analyze whether the Hermosa Beach District had broken faith or contract with the taxpayers in deciding to build the gym. The court found it had not.

In this case, planning for the November 2008 bond measure (which became Prop S) began some months before. The Board of Education held a "first reading" of the proposed measure on July 8, 2008 (AR Tab 113). In advance of this meeting, District staff had prepared a Site Specific Bond List which listed proposed improvements and projects for Hoover High School. Among those was a bullet item: "Repair and Renovate aging bleachers and fields to improve safety and disabled access." AR 114:1525. There was no specific mention of lighting or PA systems. Later versions of this list said "Renovate/replace stadium bleachers, including press box" and "Upgrade fields, track and courts for accessibility compliance" (AR 119:1644; AR 131:2085). Exhibit B to a draft resolution referred to the proposed measure as the SAN DIEGO SCHOOL REPAIR AND

SAFETY MEASURE, and included nothing specific about football field lighting. AR 123:1736. Reference to field lighting did appear, however, in Exhibit A to the Bond Resolution before the District on July 8, 2008 (AR 114:1553), on July 21, 2008 (AR 123:1733) and on July 23, 2008 (AR 130:1933). In ordinary usage in the context of high school athletic facilities, including and by way of example the Herbert Hoover High School Athletic Fields Upgrades Project as described in the MND/IS, the terms "field lighting" and "stadium lighting" are commonly understood to mean lighting used to illuminate a playing field for its intended uses. See *Committee for Responsible School Expansion v. Hermosa Beach City School Dist.* (2006) 142 Cal.App.4th 1178, 1186.

The measure was taken up by the Board of Education at a special meeting on July 21 2008. The Board decided to allow "time for staff to provide additional information to the project list," and decided to reconvene the meeting two days later. At that resumed meeting, the Board approved the Resolution placing the matter on the ballot for November 4, 2008. AR Tab 133, Tab 134.

Proposition S was adopted at the November 2008 election. Soon thereafter, at a public meeting, representatives of the District reiterated that the enhancements to the football field included field lighting. AR Tab 100.

The full text of Proposition S, as adopted by the voters, appears at AR Tab 135. Page AR 2239 thereof contains the site specific list for Hoover High. It says: "Renovate/replace stadium bleachers, including press box" and "Upgrade fields, track and courts for accessibility compliance." Again, there is nothing specific here with regard to stadium lighting or PA systems. However, page 2255, under the heading "Additional Projects," contains the following:

> Each project listed is assumed to include ... other costs incidental to and necessary for completion of the listed projects (whether work is performed by the District or by third parties), including:
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> ***
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> Repair, **upgrade, modify, expand, refinish, replace and construct site improvements,** including off street parking areas, pickup/dropoff/signage, paths, sidewalks and walkways, canopies, hard courts (student play areas), athletic play fields, landscaping, irrigation, **permanent athletic field equipment and facilities**

(including nets, basketball standards, goals and goalposts, **field lighting, etc.** (**bold** emphasis added)

Petitioner refers to this language as having been "buried" by the District in a misleading fashion (moving brief at 5:13), and argues that permitting a "catch all" provision of additional projects to allow use of Prop S funds in the manner proposed by the District is impermissible because "[s]uch and (sic) interpretation by the District is overboard, (sic) leads to absurd results, and is not the manner that specific projects are required to be set forth under [the Constitution]. (Moving brief at 5:18-19)

According to the plain language of article XIIIA, section 1, subdivision (b)(3) of the California Constitution, a school district's bond indebtedness for certain school facilities projects may be approved by only 55 percent of the voters "if the proposition approved by the voters and resulting in the bond indebtedness includes" a set of four enumerated accountability requirements. (Cal. Const., art. XIIIA, § 1, subd. (b)(3).) Those requirements are: (1) That the proceeds from the sale of the bonds be used only for the purposes specified in that section and not for any other purpose, such as salaries or operating expenses; (2) a list of the specific school facilities to be funded and the school district's certification that it has evaluated certain factors in developing that list; (3) that the school district board conduct an annual, independent performance audit to ensure that the funds have been expended only on the specific projects listed; and (4) that the school district board conduct an annual, independent financial audit of the proceeds from the sale of the bonds until all proceeds have been expended. (Cal. Const., art. XIIIA, § 1, subd. (b)(3)(A)—(D).) *Hermosa Beach, supra*, 142 Cal. App. 4th at 1187. Petitioner does not contend that criteria 1, 3 or 4 have been transgressed in this case. Thus, the question for this court is whether the penultimate page of the bond project list (AR 135:2255 as excerpted above) satisfies the statutory requirement of "a list of the specific school facilities to be funded." The court finds that it does.

First, there is nothing in the statute to support petitioner's apparent contention that the placement of "field lighting" on the next to last page of the list renders the list impermissible. The list of projects is a long one, and by definition a "list" has to have a beginning, a middle and an end. California Constitution article XIII, § 1, subd. (b)(3) does not prescribe any particular

manner in which projects must be entitled or listed. Not everything can go on page one, and it is not unreasonable to assume that an informed voter will familiarize himself/herself with the entirety of the Proposition he or she is considering.

Second, petitioner's argument proves too much. By way of illustrating the point that not all acceptable expenditures can feasibly be listed separately for each school, the same listing of "Additional Projects" to which petitioner now objects would allow for landscaping and the irrigation thereof. Does petitioner contend that, because installing landscaping and keeping it alive with water are not among the bullet points listed for Hoover on AR 135:2239, the installation/maintenance of landscaping with bond money is impermissible? Certainly not, as AR 105:876 makes quite clear.

Third, petitioner argues that this measure was "sold" to the public as an ADA accessibility and safety measure, and therefore only accessibility and safety enhancements are the proper subject of expenditure. (Moving brief at 8:5-6, 10:4-6; Reply at 2-3) The court disagrees. Even a casual reader of AR 135 would not reach the conclusion argued by petitioner. The first sentence of Prop S stated the District's intention: "To improve every neighborhood school." To the players, coaches, fans and families of the players of the Hoover sports teams, what the District plans to do is an improvement to Hoover. Another stated goal was to "improve safety/security." Certainly it could be argued that having the field lit rather than dark does precisely that. The intention to provide WiFi at Hoover was explicitly stated; the connection of WiFi to safety and accessibility is tenuous at best, yet petitioners do not contend this expenditure is impermissible. Similarly, the intention to "support learning and instruction" is patent, and for some students and teachers, football practice or marching band on the football field is one of their principal teaching and learning environments. [On this point, the available case law supports the court's conclusion — see *City of Santa Cruz v. Santa Cruz Bd. of Educ.*, 210 Cal. App. 3d 1, 8-9 (1989)(*Santa Cruz*).] The same can be said about the obvious (and explicitly stated) goal to "support student health." Certainly the physical exertion required for participation in high school athletics is part of this.

In another portion of its moving brief (p.12), petitioner urges the court to 1) resort to the

legislative history of Govt. Code section 53094; and 2) find that *Santa Cruz* was wrongly decided. Several responses are appropriate. First, it is obvious that *Santa Cruz* was decided in 1989 (not 1981 as suggested in the moving brief at 12:8), long after the 1976 legislative materials to which petitioner refers. Second, the *Santa Cruz* court already conducted a careful analysis of the statutory intent, including the 1976 amendments to section 53094. See 210 Cal. App. 3d at 7. Third, where the words of a statute are clear, resort to legislative history is unnecessary. See *Pineda v. Bank of America*, 50 Cal. 4th 1389, 1394 (2010). Finally, this court is bound by its oath and the doctrine of *stare decisis* [*Auto Equity Sales v. Superior Court*, 57 Cal. 2d 450, 455 (1962)] to follow *Santa Cruz*. Any decision not to follow the precepts of that case must come from the 4th DCA or the Supreme Court, not this court.

At the end of the day, the question for this court is whether AR Tab 135 was so lacking in candor that it can be said that the District breached its "contract" with the taxpayers. See *Hermosa Beach, supra*, 142 Cal. App. 4th at 1191. The court cannot say that it was, because the reference to upgraded field lighting was there all along. The fact that the opponents of the measure chose not to read all the way to the end [or if they did, chose not to mention the "Additional Projects" in their "con" arguments (AR 135:2163-64)] only cements this impression.

The Proposition S Bond Ballot Measure and Ballot Pamphlet (AR 135:2160-2256), read and understood as a whole, including, but not limited to, references to Hoover High School athletic facilities, constitutes a sufficient list of specific school facilities projects with the meaning of Proposition 39 to authorize the expenditure of funds for field lighting as part of the Project

For all the foregoing reasons, the court dismisses the first cause of action.

4. **Ruling on Third Cause of Action.**

The essence of plaintiff's argument is that, because the District had not passed a resolution exempting the Project from the City's zoning ordinance at the time of the January 2011 decisions, the statement therein that the Project was exempt was erroneous. The court finds that the later passage of just such a resolution renders this claim moot.

The court also finds that there is insufficient evidence to support petitioner's claim that the May Resolution was the result of the litigation, and thus the contention that petitioner is the

prevailing party fails.

Said another way, the third cause of action fails because the court is unpersuaded that the reference to section 53094 in the MND/IS was anything other than the District's notification to the public that it intended to proceed with the Project, and that it believed that the project would, when the formal Resolution was passed, qualify for the statutory exemption permitted by state law. Identification of the projects listed in Exhibit A to the May 10, 2011 Resolution is sufficient to identify the proposed uses of property for which the District claims exemption under section 53094. There is no suggestion in petitioner's submissions that the District failed to properly notify the City of San Diego of its exemption determination, or that the City has objected to the validity of the May 10, 2011 Resolution in the manner specified in section 53094(c). Nor is there any suggestion in petitioner's papers that the City has taken any action against the District arising from any zoning non-compliance issues at Hoover (or any other school) in the months since the May Resolution. In a very real sense, the May Resolution mooted the third cause of action, and it is questionable whether the third cause of action was ever viable because there was no zoning violation by the District.

5. Ruling on Fourth Cause of Action.

The fourth cause of action is fatally deficient because the court finds that the May Resolution was duly passed after proper notice to the public. Even accepting for purposes of this discussion the correctness of the declarations offered by several property owners residing near Hoover and other schools, the District has established two forms of notice: first, the proper and regular posting of the Board of Education agenda on the District's website and on the customary place on the District's headquarters building; and second, by direct reference to the exemption issue (and explicit citation to controlling authority, the *Santa Cruz* case) in response to comment letters on the MND/IS. The court also agrees with the District that petitioner has cited the court to no case holding that consideration and passage of a resolution adopting a section 53094 exemption is a project requiring CEQA review, and the court finds that it is not for the reasons discussed in the District's Opposition Brief at section VI.C. The Reply repeats its argument at 7:22, again without citation to controlling or persuasive authority. Nor does it make sense to the

court that such a review would be required given the thorough IS and legally adequate MND just a few months earlier, and the CEQA compliance required for each individual project.

* * *

For all the foregoing reasons, Petitioner's request for a writ of mandate on the third and fourth causes of action of the amended petition must be denied. The request for declaratory and injunctive relief contained in the first cause of action must also be denied, given the clear direction provided in *Hermosa Beach* and *Santa Cruz*. The District is entitled to dismissal of these causes of action. The court, having previously dismissed the second cause of action under CEQA, orders judgment in the District's favor on all claims, demands and causes of action.

IT IS SO ORDERED this 26th day of October, 2011

Timothy B. Taylor
Judge of the Superior Court