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The **FISCAL REPORT** *an informational update*

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**KEY ISSUES TO BE CONSIDERED IN FORMING A MAINTENANCE ASSESSMENT DISTRICT TO FUND RECREATIONAL FACILITIES**

**By Lori Raineri, President  
Government Financial Strategies, Inc.**

It is not uncommon for school districts to be major providers of open space for community recreation. While the fields and grounds of schools primarily have a curricular function, they are also used by community sports leagues ranging from the city recreation department's adult softball program to youth soccer, and provide general open space as well. Usually these programs are run in cooperation with the school district, and the school district is very supportive. Often the school district bears the burden of maintaining the fields and grounds for these recreational purposes, including facilities such as restrooms and parking.

Property assessments, collected on the regular property tax roll along with ad valorem taxes, are a funding mechanism often used by cities and counties for such recreational facilities, and are also available to school districts. It is important to note that assessment financing is not a new method of financing public facilities. In California, such assessments have been in use since 1911. However, assessment financing is only now becoming more widely used by school districts due to increasing budget pressures, and the resulting inability of school districts to fund more than essential curricular expenditures from traditional general fund sources.

In considering the use of assessment funding, we must understand that assessments are quite distinct from taxes. Generally speaking, taxes are for the funding of government facilities or services which are of a general benefit to the community. Assessments are specific charges for facilities or services which are of specific benefit (or special benefit) to certain property. Therefore, special benefit assessments may be levied on real property to pay for public purpose capital improvements when the improvements beneficially affect a well-defined and limited area of land.

In order to collect assessments, a "benefit assessment district" is formed which defines the property determined to benefit from the public improvement. Further, the assessment may not exceed the cost of the improvement and the assessment must be proportional to the benefit received. Because of these strict criteria for assessments, no election is required. However, affected land owners must be given formal notice of the proposed assessment and a public hearing must be held. If property owners representing more than 50% of the acreage protest, the assessment district may not be formed.

For the most part, benefit assessment financing is not available to school districts because public education is deemed to be of general benefit to all (thus the special place afforded to public education in the California Constitution). Therefore, a school district is not able to use benefit assessment financing to pay for educational facilities or services. But as we have noted, many districts provide services to the community of a recreational nature in the form of open space and landscaped sports fields. Such uses clearly constitute a special benefit.

The applicable law is the Landscaping and Lighting Act of 1972, contained in Section 22500 of the Streets and Highways Code. Improvements which may be funded under this authority include: landscaping; statuary, fountains, and other ornaments; lighting, including traffic signals; incidental facilities such as paving, irrigation, electricity, etc.; playground equipment and play courts; public restrooms; acquisition of land for park, recreational or open space; and the maintenance and servicing of such facilities. It is the inclusion of maintenance in the Landscaping and Lighting Act of 1972 which gives us the appellation "maintenance assessment district" and, due to our penchant for acronyms, "M.A.D."

The list of improvements in the Landscaping and Lighting Act of 1972 covers the activities of a school district to provide and maintain fields and grounds for community recreation purposes. The law allows for pay-as-you-go assessments for the cash purchase of improvements or annual maintenance, and also allows for the issuance of bonds, should there be a capital improvement which is better paid for over a number of years.

A benefit assessment study (also called an "engineer's report") must be performed which identifies the costs of the recreational facilities (including maintenance) and allocates the special benefit received by each parcel. Thus, there are two major issues which the benefit assessment study would have to address. The first is the costs which truly fall into the category of community recreation, as distinct from the public education function. The second is how different properties in the proposed assessment district benefit from the recreational space. This assessment of benefit can be done through classification of properties by type or distance from the facility, through the designation of improvement zones relating properties in a geographic area to particular facilities, and through boundaries (the boundaries of the assessment district do not have to be coterminous with those of the school district).

Typically, with open space and parks, property in close proximity benefits more than property located further away. The benefit decision is based on value, that is, property in close proximity to open space is worth more in the real estate market than others. However, such a benefit assessment is not likely to be distributed equally over all parcels, but differentiated by factors such as use and location. Further, there is no time limit on the collection of the assessment. An assessment for maintenance may be levied for as long as the services are being provided. However, each year that assessments are levied, the school district will have to hold a public hearing, and have an updated benefit assessment study.

The first step in developing an assessment financing plan is to establish the public purpose goals. For example, the goals might be to continue to maintain facilities for specified purposes such as sports programs, walk-on recreational use, etc. There may be safety concerns such as adequately lit parking lots or fencing. The goals will then determine the list of capital expenditures for improvements, and the associated maintenance costs. A financial plan needs to identify which of these costs (or percentage of costs) are attributable to the educational program of the school district, and which can appropriately fall within the limitations of the Landscaping and Lighting Act of 1972.

Once the costs eligible for assessment financing are identified, the benefit to properties needs to be determined (assessed). All of this evaluation will be contained in the benefit assessment study. If a school district provides the only open space in the community (no community parks), and the community is relatively small, it may be appropriate to assess benefit to all parcels

equally. When such a simple approach seems appropriate, a school district may be able to prepare a benefit assessment study in-house. However, the use of benefit assessment financing by school districts is still controversial in some places, and may be subject to challenge. Therefore, it is important that the process be rigorous enough to stand up in court, and it is advisable to obtain assistance from experts in the field.

Relevant experts would include legal counsel, an assessment engineer, and a financial consultant. Often such experts do not have to come from far away at great expense. As mentioned above, assessment financing is common among cities and counties. The first resource should be the city or county planning department. A school district considering use of benefit assessment financing should find out how other local government agencies utilize assessment financing, both for political and administrative reasons. With regard to legal services, if the district's legal counsel also serves cities and counties, as would a county counsel or a law firm specializing in government, then the district's legal counsel may be well-qualified to assist with the formation of an assessment district. If the district's legal counsel is not familiar with assessment financing, the school district may wish to work with county counsel or hire a private specialist.

The city or county may have qualified assessment engineers on staff who could help (presumably for a fee), or may be able to recommend a local engineer. The financial analysis needed may be within the capability of the assessment engineer, or the school district may also need a financial consultant. This could be determined by interviewing the individual who will prepare the benefit assessment study. It is important that the benefit assessment study be able to stand scrutiny on its own, without additional supporting documents. Therefore, it is extremely important that the author of such a study have experience.

Finally, it is important to understand the potential for political problems resulting from the formation of a benefit assessment district. Historically, benefit assessment districts have been used to provide improvements in cohesive geographic areas, where taxpayers understood the benefit to be received and their responsibility for it. For example, on a residential street which is not a main thoroughfare, assessment financing might be used to provide streetlights. When an assessment district is used on a broad area, there can be less understanding among the general public of the relationship of special benefit, and political controversy can result.

Also, the amount of assessment can be a major factor. When the assessment fits within the price threshold of the taxpayers, there is generally less controversy. Furthermore, the school district should be aware of other assessments levied on property by other government agencies, because there might already be a relatively high burden in particular areas. Despite the simple requirement for a public hearing and notice to property owners, a school district might wish to add additional opportunities for public input prior to starting the formal assessment district formation process to ensure that the community is supportive.

In conclusion, benefit assessment financing is not a financial panacea, and it may not be acceptable in some communities. But to the extent that a school district is spending dollars meant for the education of children on the provision of recreational facilities, it should look to transfer this financial responsibility to those who benefit. In that way, school district money can be focused on school district needs.

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