



CASE REPORT

CONSERVATION DISTRICT SPECIAL ASSESSMENTS - SPECIAL BENEFITS RECEIVED. Mason County ordinance levying a flat per-parcel special assessment on nonforest lands without a corresponding per acre assessment within the conservation district was invalid on statutory grounds. *Cary v. Mason County*, No. 83937-9, Washington Supreme Court (Feb. 16, 2012).

I. Facts. The Mason County Conservation District (“District”) asked the Mason County Board of Commissioners (“Board”) to levy a special assessment of \$5.00 per parcel and \$0.07 per acre to create a fund dedicated to addressing water resource protection issues in Mason County. The District proposed allocating a portion of the assessment revenue to the Mason County Department of Health Services in order to fund the County’s threatened area response program, to identify sources of pollution, and to provide matching funds for future grant opportunities. The District proposed to use its share of the revenue to provide technical assistance to property owners regarding water pollution. Thereafter, the Board held a public hearing at which the Department of Health Services recommended that the Board approve the proposed assessment, but eliminate the \$0.07 per acre rate due to the high administrative costs associated with its collection. The Board agreed with the recommendation and adopted an ordinance levying a “five-dollar flat rate” on all nonforest lands in the County. The County began collecting the assessment in 2003. That same year, County residents filed suit seeking a declaratory order ruling that the ordinance was invalid on statutory grounds and as an unconstitutional property tax. The trial court agreed, and the appellate court reversed.

II. Applicable Law and Analysis. The Supreme Court reversed the appellate court and held that the District assessments were invalid on statutory grounds. Because the Court invalidated the assessments on statutory grounds, it did not reach the question of whether the assessments were also unconstitutional.

RCW 89.08.400 authorizes counties to impose “special assessments” to fund the activities of conservation districts and specifically provides that the “activities and programs to conserve natural resources, including soil and water, are . . . of special benefit to lands.” The assessment rate can be stated either as a uniform rate per acre or a flat rate per parcel plus a uniform rate per acre. RCW 89.08.400(3). The maximum rate per acre may not exceed \$0.10, and the maximum rate per parcel may not exceed \$5.00, except in King County, which has a population of more than 1,500,000, where it may not exceed \$10.00. As a preliminary matter, the District asserted that the validity of the ordinance was not subject to judicial review because RCW 89.08.400(2) provides that the “findings of the county legislative authority” that the assessments are in the public interest and will not exceed the benefits of the district’s conservation programs “shall be

final and conclusive.” The Court rejected this argument, stating that the legislature may not deprive the court of its obligation to review the statutory or constitutional validity of special assessments.

The Court found that the special assessments violated the plain language of RCW 89.08.400(3)¹ because the Board eliminated the per acre rate in order to avoid the administrative costs associated with collection. The District argued that nothing in the statute actually prohibited the county’s legislative authority from setting the rate per acre at \$0.00, thereby effectively eliminating it. In the District’s view, because the statute only sets a maximum rate, not a minimum rate, the County was free to impose only a flat rate per parcel so long as the rate per acre was “stated as” \$0.00. The Court was not persuaded by this argument. The statute also directs counties to “classify lands in the conservation district into suitable classifications according to benefits conferred” and to “determine an annual per acre rate of assessment for each classification of land.” The Court reasoned that since lands are classified according to benefits conferred, a per acre rate of \$0.00 implies that the District’s activities confer no benefit on the land in that classification. Thus, a classification with a per acre rate of \$0.00 would not be a suitable classification for lands that do benefit from a District’s activities. In other words, land subject to the assessment should be assigned a positive per acre rate corresponding to the benefits conferred. In the Court’s view, the District’s interpretation of the statute eliminated the proportionality that the legislature sought to achieve between the amount of the special assessment and the benefits conferred by the district’s activities.

Having found the ordinance invalid, the Court held that the plaintiffs were entitled to recovery of the assessments they paid under protest.

III. Conclusion. This case may affect cities and towns receiving grants from their local conservation districts. Void taxes that are voluntarily paid cannot be recovered back, but void taxes that have been paid under protest may be recovered back. Thus, conservation districts with solely a flat per parcel rate may refund assessments collected if they were paid under protest. This could affect cities and towns depending upon the language of interlocal agreements entered into with a conservation district. While it is likely that conservation districts will amend special assessment rates for future collection, the constitutional issue still remains. If you have any questions regarding this matter, please contact your City Attorney.

¹ RCW 89.08.400(3) provides in pertinent part: “A system of assessments shall classify lands in the conservation district into suitable classifications according to benefits conferred or to be conferred by the activities of the conservation district, determine an annual per acre rate of assessment for each classification of land, and indicate the total amount of special assessments proposed to be obtained from each classification of lands. Lands deemed not to receive benefit from the activities of the conservation district shall be placed into a separate classification and shall not be subject to the special assessments. An annual assessment rate shall be stated as either uniform annual per acre amount, or an annual flat rate per parcel plus a uniform annual rate per acre amount, for each classification of land.”