

VICTORIA FALLS SPECIAL TAXING
DISTRICT

vs.

PRINCE GEORGE'S COUNTY,
MARYLAND

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IN THE

MARYLAND TAX COURT

Nos. 09-**MI**-OO-0995 (1-279)
and 10-**MI**-OO-0415 (1-46)

MEMORANDUM AND ORDER

Petitioner (hereinafter "Victoria Falls") is a retirement community for those 55 and over in age. Victoria Falls will include 609 dwellings when fully built. The Prince George's County Council passed Resolution CR-49-2005 approving the issuance of special obligation bonds to fund the development and construction of infrastructure improvements for a retirement community known as Central Parke at Victoria Falls. The Resolution established the Victoria Falls Special Taxing District (Victoria Falls STD) to repay the bonds in compliance with Maryland's Enabling Act, Maryland Annotated Code, Article 24, Section 9-1301. Prior to the establishment of Victoria Falls STD, 25 units not included in the Victoria Falls STD were sold with settlement dates between November 30, 2004 and March 1, 2005. A map of the geographic area of Victoria Falls STD included in the Stipulation reflects that the excluded units are within the physical boundaries of Victoria Falls and are part of the Victoria Falls adult community subject to covenants and restrictions of record. It should be noted that the excluded units, while not subject to the special tax, are subject to a declaration of deferred water and sewer charges recorded among the Land Records of Prince George's County. The properties owned by the Petitioners are not subject to the declaration of deferred water and sewer charges.

During the period March 10, 2005 to July 25, 2005, there were closings on the sales of 39 additional dwelling units which were subject to the Victoria Falls STD. The individual homeowners who purchased post-application/pre-resolution units or their successors in ownership are subject to special taxes pursuant to the Victoria Falls STD. Prior to July 29, 2005, none of the post-application/pre-resolution owners requested that the County or the County Executive subject their property within Victoria Falls to STD taxation. In addition, no consent to such taxation obtained from any post-application/pre-resolution owner was communicated to the Council or the County Executive or his agents. Of the 39 post-application/pre-resolution units, 33 units were sold to Petitioners. Between July 26 and July 28, 2005 five more dwellings settled with two properties being conveyed to Petitioners during this period. The remaining units were sold to persons who are not a party to this appeal. In total, 35 properties were conveyed to Petitioners during the period of March 2, 2005 to July 28, 2005. Moreover during the period March 10, 2005 through July 25, 2005, the Petitioners entered into 59 contracts for the purchase of property proposed for the Victoria Falls STD.

Every Petitioner either signed or initialed one or more documents which disclosed the actual or prospective existence of the Victoria Falls STD and the actual or prospective assessment of taxes on Petitioners' properties arising out of the Prince George's County Resolution dated July 5, 2005. In addition, each of the 25 homeowners who purchased an excluded unit also signed a sales contract. On September 1, 2005 the Prince George's County entered into an Acquisition Agreement with Pines of Laurel, LLC, which required that the deed for each new Victoria Falls homeowner in the Victoria Falls STD contain a disclosure of the Victoria Falls STD. 207 of the 286 Petitioners whose

closings were after September 1, 2005 received the disclosures of the Victoria Falls STD in the deeds to their homes. On September 15, 2005, the Pines of Laurel, LLC recorded a Second Amendment to the Amended and Restated Community Constitution among the Land Records of Prince George's County disclosing the existence of the Victoria Falls STD. Seventy-nine Petitioners signed copies of the Second Amendment to the Amended and Restated Community Constitution or documents acknowledging their receipt of the Second Amendment as part of the settlement of their purchases on or after September 15, 2005. Beginning November 1, 2005, all new Victoria Falls homeowners were required to sign a document entitled "Disclosure of Special Tax Relating to Victoria Falls Special Taxing District, Prince George's County, Maryland." Two hundred and eight Petitioners signed this disclosure as part of the settlement of their home purchases on or after November 1, 2005. A number of the Petitioners also signed a Notice of Creation of Special Taxing District and Imposition of Special Tax and Imposition of Special Tax, as well as a disclosure statement for Victoria Falls Community Association, Inc. disclosing the actual or prospective existence of the Victoria Fall STD.

The Petitioners claim that Prince George's County failed to comply with the legislative requirements for establishing the Victoria Falls Special Taxing District. Each Petitioner provides ten grounds for their refund claims and no Petitioner has claimed that the tax imposed has been calculated incorrectly.

Petitioners' first claim is that the Resolution was enacted in violation of the Maryland Annotated Code Article 24, Section 9-1301 (the "State Enabling Act"). The State Enabling Act requires two-thirds of the owners of real property in a Special Tax District at the time of the adoption of the Resolution to consent to the creation of the Special Taxing

District. Petitioners concede that the State Enabling Act requirements were met at the time of Victoria Falls Special Taxing District Petition on March 10, 2005. However, the Petitioners claim that the subsequent ownership changes that occurred within the Special Taxing District caused a percentage of owners who joined the Petition to fall below two-thirds.

On March 10, 2005, 100% of the land owners in the Victoria Falls Special Taxing District made a written request to Prince George's County to create the Victoria Falls Special Taxing District for the construction of certain public improvements, including roads, sidewalks, water and sewer systems. The five applicants, which included the developer and four home builders, held legal title to all the land in the proposed district. The boundaries of the Victoria Falls Special Taxing District were clearly defined in the application by block and parcel numbers, property tax identification numbers and on an accompanying plat.

In order to ensure that all purchasers of lots and homes located within Victoria Falls were put on notice of the potential imposition of special taxes, disclosures were included in lot purchase agreements between the developer and the home builders and disclosures and contracts were also included in contracts with homeowners. In addition, a special covenant was included in Victoria Falls Homeowners Association Governing Document and a Declaration of Taxes was recorded in the Land Records after the Victoria Falls Special Taxing District was approved.

On June 21, 2005, the County Council adopted the Resolution and on June 23, 2005, the County Executive submitted to the County Council proposed legislation establishing the Victoria Falls Special Taxing District. The County Executive noted that

financing of the costs of significant infrastructure improvements in connection with this project "... will ensure the development of a first rate age restricted residential community."

After considerable investigation and analysis regarding the financing strategies, the County determined that the financing of the costs of significant infrastructure improvements in connection with the project would ensure the development of a first rate community. On July 14, 2005, Notice of the Public County Council Hearing on the Resolution slated for July 26, 2005 was published in four separate newspapers. After the public hearing, the Resolution was adopted by the County Council and approved by the County Executive on July 29, 2005. Pursuant to the Resolution, the County sold \$12,000,000 in Special Obligation Bonds.

Each purchaser who settled on the purchase of a property within the Special Taxing District prior to enactment of the Resolution was placed on actual notice of the special tax by the Petitioners' signature and acknowledgement on the contract addendum, which was an integral part of the Home Sales Contract. The relevant portion of the contract addendum provides as follows:

The Development is proposed to be located within the Victoria Falls Special Assessment District (the "Special Assessment District"), a special taxing district which may be created by Prince George's County. **If the Development becomes subject to the Special Assessment District taxing scheme, each owner of a lot or home in the Development will be liable to pay annually any special assessment and/or special tax imposed under Chapter 10-269 of the Prince George's County Code (the "Special Assessment District Assessment").** As of the date of these disclosures, the rates or amounts of the Special Assessment District Assessment have not yet been set by the County, but, if the Special Assessment District is established, the amount assessed will be set at a fixed rate each year, resulting in an estimated Special Assessment District Assessment for the initial year (commencing in Fiscal Year 2005) to be approximately \$1,300.00 to \$1,600.00 for a single family detached house; however such amounts are estimates only and are subject to change.

Homebuyer shall be liable to pay the full amount of the Special Assessment District Assessment actually assessed from time to time against the Property. The Prince George's County Council may increase the rate of any special tax or principal of, interest on and any redemption premium on any bonds which are to be issued by the County for the Special Assessment District and to replenish the debt service reserve fund for such bonds. The Special Assessment District Assessment would commence in the amount specified above with respect to all lots on a specified date after the date the bonds are sold by the County for the Special Assessment District (the "Commencement Date"). The Special Assessment District Assessment would terminate (except as to any unpaid Special Assessment District Assessments, interest, costs, late fees, and/or attorneys' fees) on the date that the bonds issued in respect of the Special Assessment District have been paid in full. For further information on the Special Assessment District Assessment, a purchaser of a Lot may contact Mr. Thomas L. Kozeny at 703-426-9532.

In addition, 207 of the Petitioners received a detailed disclosure of the Victoria Falls Special Taxing District in the deeds to their homes. The deeds expressly state:

The Grantee, for and on behalf of the Grantee and the Grantee's heirs, personal representatives, successors and assigns, by acceptance of this deed, further **covenants and agrees to pay the special tax levied against properties located within the Victoria Falls Special Taxing District** created by the Resolution adopted by the County Council of Prince George's County, Maryland on July 26, 2006 pursuant to the provisions of such Resolutions.

The Petitioners' ten grounds cited as the basis of their claim for refund can be summarized into five challenges to the legislative process which created Victoria Falls Special Taxing District. It should be noted that under Maryland law, the Maryland Court of Appeals has stated that:

"Where the Legislature has fixed the assessment, the courts will ordinarily enforce it and the matter is usually considered one for the exercise of legislative discretion. The legislative determination as to the imposition of a special assessment upon properties specifically benefited is presumed correct and an assessment, if imposed according to a definite and just plan, will not be disturbed where neither fraud nor mistake appears." *Baltimore County v. Batza*, 67 Md.App. at 303-04 (1986).

Unless there is a suspect class or fundamental right at issue, the courts' analysis presumes that the statute and the County's action in compliance are constitutional and any challenge must be reviewed under the rational basis test. *Lonaconing Trap Club, Inc. v. Maryland Department of the Environment*, 410 Md. 326 (2009).

We agree with the Respondent that there is an extremely high burden which must be met by the Petitioner in order for the Court to conclude that the actions of the State and the County were unconstitutional. We further agree with the Respondent that the Petitioners have failed to meet the burden required of them to show that the governing Enabling Acts and the County's Resolution in compliance with those acts were in fact unconstitutional.

The Petitioners rely on *Mullane v. Cent. Hanover Bank & Trust Company*, 339 U.S. 306 (1950) for the proposition that individual notice is a necessary prerequisite to legislative action. Petitioners contend that notice by publication without specific individual notice violates Due Process. However, it is clear that individual notice and hearing are not required in a legislative process prior to legislative action. At issue in *Mullane* was notice by publication in a judicial proceeding, not a legislative proceeding. The Court of Appeals in *Boitnott v. Mayor & City Council of Baltimore*, 356 Md. 226 (1999), specifically rejected the application of *Mullane* to notice in a legislative proceeding. The cases cited by Petitioners regarding lack of individual notice concern notice in an adjudicatory proceedings which is inapplicable to the notice required in a legislative action in this case.

Petitioners also argue that in order to create a Special Taxing District, approval by two-thirds of the property owners were required under the Enabling Act. However, Petitioners conceded that the Enabling Acts "requirements were met at the time

of the Victoria Falls Special Taxing District Petition on March 10, 2005.” Consequently, a valid request was made on March 10, 2005 by two-thirds of the proper owners and notice to the contractual home purchase buyers was not required. There is no requirement in the statute that the requesting parties maintain continuous ownership throughout the approval process. We agree with Respondent that the only rational reading of the statute provides that once a request is received, the statute is satisfied.

Petitioners also claim that no special benefit was received from the improvements which were financed by the bonds because they were subsequent purchasers of the properties. They claim that the applicants who owned the properties at the time of the original request benefited from the alleged increased value in the properties and that the Petitioners were left with the burden of paying the taxes assessed. But Petitioners' claim falls short because their properties receive special benefits arising from the Resolution and creation of the Special Tax District. Each property received infrastructure improvements within the District, including sidewalks, streets, landscaping, plumbing, sewage facilities and other infrastructure improvements. The construction of the infrastructure improvements conveys a special benefit to the property, not the person who owns or occupies the properties. In *Pumphrey v. County Commissioners of Anne Arundel County*, 212 Md. 536 (1957), the Court of Appeals rejected the personal benefit theory of Petitioners when it concluded that, “Garbage collection ... has been determined by the Legislature to be beneficial to the properties” Petitioners claim that the benefit as conferred upon the person would necessarily require that every subsequent owner of a property could challenge the tax within a Special Taxing District because a subsequent

owner did not receive the benefit of the property's increased value but still must pay the tax. There is no rational basis to Petitioners' contention.

The Court also finds that the Petitioners' argument that the improvements being financed were already going to be installed by the developer also lacks merit. The very purpose of the Enabling Act was to provide for such improvements regardless of whether the developer was required to install the improvements as a condition of a planned development. Petitioners' argument dismisses the market realities surrounding the sale of bonds in which bond buyers demand cost certainty and preliminary approvals prior to construction. The fact that the community was partially completed by the time the Special Taxing District was enacted provides cost certainty and reduced risks thereby decreasing the interest rate the market charged on the bonds.

The Petitioners also contend that the geographic region designated as the Victoria Falls Special Taxing District requires that all properties within a subdivision must be included in the region in order for it to constitute a "defined geographic region." However, there is no express statutory requirement that the Special Tax District must have a particular shape or include particular properties in order to constitute a defined geographic region. Moreover, Petitioners concede that "there is no claim of fraud, mistake, indefiniteness or injustice." The Maryland Enabling Act provides that the governing body of a County may "designate by Resolution an area or areas as a Special Tax District" without any reference to contiguity or a specific subdivision. Maryland courts have ruled, as have courts in other jurisdictions, that the shape of a Special Tax District is one for legislative determination and subject to absolute deference from the courts. The fact that 25

properties in the subdivision were excluded from the district does not defeat the requirement of a defined geographic region. The Petitioners challenge of the lack of a defined geographic region must be denied.

Finally, Petitioners' contention that the Victoria Falls Special Taxing District violates uniform taxation under the Maryland Declaration of Rights and equal protection under the Maryland and Federal Constitutions must be denied. The Court of Appeals in *Williams v. Anne Arundel County*, 334 Md. at 109, stated that the uniformity requirement encompassed in Article 15 of the Declaration of Rights does not apply to special tax districts. However, Maryland law does require equal treatment of properties within the Special Taxing District and in the same class. But there is no requirement that all properties within the subdivision must be included within a Special Tax District unless all the properties are in the same class. The exclusion of 25 previously settled units from the Special Tax District was perfectly rational and appropriate. The excluded units were subject to separate and distinct water and sewer charges, while the properties within the Victoria Falls Special Tax District were exempt from those charges. The fact that the other owners of property within the Victoria Falls subdivision may consequently benefit without having paid a similar tax does not render the Enabling Act violative of State and Federal Constitutional Due Process and equal protection guarantees. There was a rational basis for the exclusion of the 25 properties from the Special Taxing District as they were not parties to the March 10, 2005 request to form the Special Taxing District. Moreover, the special tax is uniform among all properties that were part of the request to form the Special

Taxing District, therefore, the special tax does not violate the right to uniform taxation even if we assume the uniformity requirement of Article 15 applies to the special tax.

For all of the above reasons, it is this 11th day of May, 2011, by the Maryland Tax Court ORDERED that the Petitioners' request for a refund of taxes paid and future adjustments of taxes is hereby denied.

CC: David W. Brown, Esq.
Donald A. Rea, Esq.

CERTIFIED TRUE COPY
TEST: John T. Hearn, Clerk

NOTICE: You have the right of appeal from the above Order to the Circuit Court of any County or Baltimore City, wherein the property or subject of the assessment may be situated. The Petition for Judicial Review **MUST** be filed in the proper Court within thirty (30) days from the date of the above Order of the Maryland Tax Court. Please refer to Rule 7-200 et seq. of the Maryland Rules of Court, which can be found in most public libraries.