

# Municipal & Public Finance

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## TAX INCREMENT FINANCING RESURRECTED

BY JEFFREY C. NAVE

On May 7, 2001, Governor Locke signed Engrossed Substitute House Bill 1418 (the "TIF Act"). The TIF Act authorizes cities, counties and port districts to create "increment areas," to issue general obligation bonds to finance "public improvements" within the increment area, and to repay such bonds with "tax allocation revenues," among other things. It will become effective on July 22, 2001, and will "sunset" on July 1, 2010.

The original tax increment financing statutes (chapter 39.88 RCW) were enacted in 1982. The TIF Act does not amend or repeal chapter 39.88 RCW. It creates a new chapter in Title 39 RCW. This may have been done to distinguish the TIF Act from the earlier attempts to bring tax increment financing to Washington State. The voters rejected attempts in 1973, 1982 and 1985 to amend the Washington Constitution and authorize tax increment financing. The Washington Supreme Court ruled chapter 39.88 RCW unconstitutional in *Spokane v. Leonard* (1995) on the grounds it diverted tax revenue intended to support the common schools.

The TIF Act authorizes cities, counties and port districts to create "increment areas" and use "community revitalization financing" to finance infrastructure and other improvements in such areas. An "increment area" is a geographic area within the boundaries of the sponsoring city, county or port district. In this sense, increment areas are similar to local improvement districts.

### ALLOCATION OF TAX REVENUES

The TIF Act allows the sponsoring government to capture a portion of the *regular* property taxes imposed on property within the increment area by all taxing districts other than: (i) regular property taxes specifically levied by port districts or public utility districts to pay debt service on general indebtedness; and (ii) regular property taxes levied by the State for the support of the common schools.

Excess property taxes, such as those levied to repay voted bonds and those levied by schools, are not subject to allocation under the TIF Act.

The portion of regular property taxes subject to capture by the sponsoring government is equal to: (i) the aggregate levy mill rate of all regular property taxes to be imposed in the increment area (subject to the exceptions for certain port, PUD and State taxes), multiplied by (ii) 75% of any increase in the assessed value of real property in an increment area that is placed on the tax rolls after the increment area is created. These are referred to as "tax allocation revenues." The first distribution of tax allocation revenues occurs in the year after the increment area is created.

County assessors have the responsibility of allocating assessed values for purposes of the TIF Act. County treasurers have the responsibility of distributing regular property taxes collected within an increment area.

# NEWS

July 2001

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## E-MAILS CONSIDERED "PUBLIC RECORDS"

BY ANGELIE CHONG

Are e-mails public records? The Washington Court of Appeals recently addressed that issue in *Tiberino v. Spokane*, 103 Wn. App. 680, 13 P.3d 1104 (2000). Generally, the Washington Public Disclosure Act ("Act"), chapter 42.17 RCW, requires disclosure of public records of any form by governmental entities upon request unless they fall under an exemption under the Act.

A "public record" subject to disclosure under the Act includes "[1] any writing [2] containing information relating to the conduct of government or the performance of any governmental or proprietary function [3] prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics." RCW 42.17.020(36) (emphasis added).

The facts of this case are as follows: Gina Tiberino was secretary for the Spokane County Prosecutor's Office. She was terminated for her unsatisfactory work performance, including her excessive personal use of e-mails during work. She threatened litigation, and the Prosecutor's Office printed all e-mails in the employee's folder. Of the 551 items, 467 were personal in nature. The county received several requests for release and copies of all e-mail correspondence from the news media.

Ms. Tiberino conceded that the e-mail records were "writings," "prepared, owned, used or retained by a state agency." It is unclear whether the e-mails would be considered "public record" at all had the County not printed them in preparation for litigation. Although the court did not discuss this issue, courts have generally construed "writing" liberally, including every "means of recording any form of communication or representation." See *Oliver v. Harborview Medical Center*, 94 Wn.2d 559, 565-66, 618 P.2d 76 (1980) (citing RCW 42.17.020(28)).

Ms. Tiberino argued that the e-mail records were not "public records" because they did not contain any information

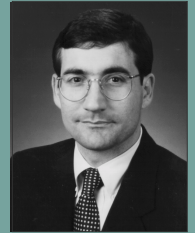
related to the conduct of governmental or proprietary function. The court found, however, that the printed e-mails were writings as contemplated by the Act because they were used by the government to prepare for litigation over her termination, a governmental or proprietary function.

Next, the court held that the e-mail records were exempt from disclosure under the personal privacy exemption under the Act. RCW 42.17.310 (1)(b) exempts from disclosure: "personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy."

The court concluded that Ms. Tiberino's e-mails fell under the personal privacy exemption because disclosure would be highly offensive to any reasonable person and because the personal e-mails were of no public significance. The e-mails contained expletives and vulgarities, and discussed intimate matters; therefore, they are personal and unrelated to governmental operations and are exempt. Notwithstanding that Ms. Tiberino had been terminated for personal use of the County's e-mail system, the court stated that it is the amount of time spent on personal matters, not the contents of personal e-mails, telephone calls, and conversations, that is of public interest.

This case provides meaningful guidance on how to determine when public disclosure of records will violate a person's right to privacy and be of no legitimate public concern. The court distinguishes *Spokane Research & Defense Fund v. Spokane*, 99 Wn. App. 452, 994 P.2d 267 (2000), where the public sought information regarding the City Manager's performance evaluation. The court found that although evaluations of public employees are ordinarily not subject to public disclosure and would be offensive to a reasonable person, the evaluation of the city's chief executive officer was a legitimate subject of public interest and public debate. Similarly, in *Yakima Newspapers, Inc. v. Yakima*, 77 Wn. App. 319, 890 P.2d 544 (1995), the

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## TAX INCREMENT FINANCING RESURRECTED

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The sponsoring government's ability to collect tax allocation revenues terminates when tax allocation revenues are no longer necessary or obligated to pay the costs of the public improvements. Other taxing districts may require the sponsoring government to be more specific about the period during which tax allocation revenues will be diverted.

For political reasons, the sponsoring government may wish to distribute a portion of the allowable tax allocation revenues to other taxing districts within the increment area. The TIF Act allows for this, so long as bond debt service, bond reserve, and other bond covenant requirements are satisfied. The balance of tax allocation revenues will be allocated to the other taxing districts in proportion to their regular tax levy rates.

### AUTHORIZED PURPOSES

Tax allocation revenues can be spent by the sponsoring government only "to finance public improvement costs associated with the public improvements financed in whole or in part by community revitalization financing."

- ♦ "Public improvement costs" are defined to mean "the costs of: (a) Design, planning, acquisition, site preparation, construction, reconstruction, rehabilitation, improvement, and installation of public improvements; (b) relocating, maintaining, and operating property pending construction of public improvements; (c) relocating utilities as a result of public improvements; (d) financing public improvements, including interest during construction, legal and other professional services, taxes, insurance, principal and interest costs on general indebtedness issues to finance public improvements, and any necessary reserves for general indebtedness; (3) assessments incurred in revaluing real property for the purpose of determining the tax allocation base value that are in excess of costs incurred by the assessor in accordance with the revaluation plan under chapter 84.41 RCW, and the costs of apportioning the taxes and complying with this chapter and other applicable law; and (f) administrative expenses and feasibility studies reasonably necessary and related to

these costs, including related costs that may have been incurred before adoption of the ordinance authorizing the public improvements and the use of community revitalization financing to fund the costs of the public improvements."

- ♦ "Public improvements" are defined to mean: "infrastructure improvements" (including street construction *and maintenance*, parking facilities, water and sewer improvements, and others); and "expenditures" for environmental analysis, professional management, planning, promotion within the increment area, management and promotion of retail trade activities in the increment area, maintenance and security for common or public areas in the increment area, and historic preservation activities.

While maintenance, security and promotion expenditures are defined to be "public improvements" for purposes of the TIF Act, such expenditures are not included within the definition of "public improvement costs." This may create a dilemma for those entities that wish to spend tax allocation revenues on maintenance, security and promotion expenditures. If read literally, the only way tax allocation revenue can be used to pay for maintenance, security and promotion within the increment area is if bonds are issued to finance such expenditures.

### CREATION OF INCREMENT AREAS

The TIF Act establishes certain conditions that must be met before the sponsoring government can create an increment area. These include:

- ♦ the sponsoring government must expect the proposed public improvements will (i) encourage private development and (ii) increase the fair market value of real property within the increment area;
- ♦ the anticipated private development must be consistent with the countrywide planning policy, and the local government's comprehensive plan and development regulations, adopted under the Growth Management Act;

# SAVE THE DATE: CIVIL SERVICE CONFERENCE

Mark your calendars for the 20th Annual Civil Service Conference, slated for Tuesday, September 25 and Wednesday, September 26 in Yakima, WA.

As in past years, the conference is crafted to provide the civil service commissioner, secretary, examiner and other local civil service officials with practical information on current practices and issues they face every day.

Registration forms will be mailed in late July. For additional information call Stefin Kohn, Marketing Administrator, at (206) 447-8985 or email [kohns@foster.com](mailto:kohns@foster.com). Or, log on to [www.foster.com](http://www.foster.com). From the homepage, click on Newsroom, then Conferences and Seminars.

If you have specific questions about program topics, call Steve DiJulio at (206) 447-8971 or email [dijup@foster.com](mailto:dijup@foster.com).

## TAX INCREMENT FINANCING RESURRECTED

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- ♦ taxing districts that levy at least 75% of the regular property tax within the increment area must approve the community revitalization financing by means of a written agreement;
- ♦ fire protection districts have “veto” power over the creation of the increment areas—a fire protection district must approve its participation in the community revitalization financing if it levies a regular property tax within the increment area; and
- ♦ the sponsoring government must hold a properly-noticed public hearing on the proposed financing of the public improvement.


Similar to local improvement districts, the period for challenging the creation of an increment area is relatively short. A 30-day statute of limitations commences once notice is published stating that the increment area has been created.

### CONCLUSION

Community revitalization financing will provide the greatest benefits when it is used in conjunction with the issuance of bonds. Unlike other tax increment laws around the country, the TIF Act does not authorize the issuance of special revenue bonds or other obligations that do not give rise to indebtedness. Rather, it merely provides an additional source of revenue (i.e., a portion of the regular taxes levied by other taxing districts) to apply toward debt service on the sponsoring government’s general obligation bonds. The sponsoring government’s general fund likely will be at risk to the extent tax allocation revenues are insufficient to meet these debt service obligations. In light of this fact, any entity

considering community revitalization financing may wish to consider the following:

- ♦ the sponsoring government will receive *no* tax allocation revenues if the assessed value of the increment area declines below its original amount;
- ♦ the sponsoring government will receive no tax allocation revenues if a court determines the TIF Act is unconstitutional;
- ♦ because significant increases in assessed value of property must occur in the increment area before tax allocation revenues will be sufficient to finance meaningful improvements, community revitalization financing favors projects involving undeveloped and under-developed property;
- ♦ general obligation bonds issued to assist in community revitalization financing will count against the sponsoring government’s constitutional and statutory debt limits; and
- ♦ in light of the fact the TIF Act expires in 2010 (including the statutes requiring county assessors and county treasurers to allocate assessed value and distribute tax allocation revenues), there is no guarantee tax allocation revenues will be available to meet debt service obligations beyond July 2010.

Nevertheless, we believe the TIF Act provides cities, counties and ports with a new—and potentially powerful—economic development tool. 


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## E-MAILS CONSIDERED “PUBLIC RECORD”

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court held that disclosure of a settlement agreement concerning the city’s use of public funds had legitimate public interest. Unlike the content of Ms. Tiberino’s personal e-mails, the actual content of the disclosed information in *Spokane Research and Yakima Newspapers, Inc.*, was of public interest.

To determine whether information sought for disclosure is of legitimate public significance

requires some balancing of public interest in disclosure against interest in efficient administration of government. Lawyers in our Municipal Law Practice Group can answer your particularized questions about implications of the *Tiberino* case or other public records act issues. Please feel free to contact Angelie Chong at 206-447-5331. 

# BUSH SIGNS NEW TAX LAW -- SCHOOLS WIN

BY JEFFREY C. NAVE

On June 7, 2001, President Bush signed into law the "Economic Growth and Tax Relief Reconciliation Act of 2001" (H.R. 1836). The Act amends certain provisions of the Internal Revenue Code of 1986. For the most part, the Act did not affect provisions of the Code relating to the issuance of tax-exempt bonds—with two exceptions.

## EXPANDED ARBITRAGE REBATE EXCEPTION

First, the "small issuer" exception to the arbitrage rebate exception has been increased to \$15 million for public school facilities. This will apply to bonds issued after 2001. An issuer of bonds for public schools will qualify for the expanded rebate exception if:

- ♦ the issuer is a governmental unit with the power to impose taxes of general applicability within its boundaries that, when collected, may be used for the issuer's general purposes;
- ♦ the bonds are not private activity bonds;
- ♦ the issuer uses at least 95% of the bond proceeds for its local governmental activities; and
- ♦ the aggregate amount of tax-exempt bonds issued by the issuer during the calendar year does not exceed \$15 million, of which \$5 million can be allocable to general expenditures and the remainder must be allocable to "construction" expenditures (as described below) for public school facilities that are owned by the issuer, a state or another local governmental unit.


The expanded "small issuer" rebate exception will not be universally applicable to all school financings. If more than \$5 million of bonds issued during a calendar year are to finance acquisition expenditures,

the small issuer exception will not apply. This is because all amounts issued over the \$5 million threshold must be allocable to capital expenditures relating to (i) the cost of erecting and installing improvements to land, such as buildings and other permanent structures (but not to the acquisition of land or interests in any existing improvements), and/or (ii) the costs of building certain tangible personal property that cannot be readily acquired.

## PUBLIC SCHOOL PRIVATE ACTIVITY BONDS

The Act also creates a new category of "exempt facility" private activity bonds for "qualified public educational facilities." The interest on these private activity bonds generally will be exempt from federal income taxes, other than the alternative minimum tax. It is doubtful that these bonds will be issued on a widespread basis, as only \$5 million (or less) can be issued annually in each state. Furthermore, existing state laws may preclude most issuers from meeting the conditions necessary to issuing the bonds. These include:

- ♦ the bonds must finance part of a public elementary or secondary school (including stadiums and centers for school events) that is *owned* by a for-profit corporation pursuant to a public-private partnership agreement with a state or local education agency; and
- ♦ the for-profit corporation must transfer the facility to the local education agency when the bonds are retired.

The Act provides that "qualified public educational facility" bonds cannot be issued before January 1, 2002. We will provide future reports regarding how such bonds are being used. 

## ABOUT THE MUNICIPAL & PUBLIC FINANCE PRACTICE GROUP

Foster Pepper & Shefelman PLLC has an established and recognized general municipal law practice. We regularly provide special counsel services to counties, cities, school districts, housing authorities, public hospital districts and other municipal entities and frequently serve as general counsel to municipalities. We are often called upon by county prosecutors and city attorneys to assist them on projects for which they are without sufficient staff or expertise. In addition, we serve as special counsel on solid waste procurement and/or environmental matters for several counties.

For more than fifty years, Foster Pepper & Shefelman PLLC has regularly assisted municipalities in negotiating and drafting intergovernmental contracts related to utility services such as water, sewer, solid waste and electricity, and lawyers at the firm often represent cities, counties and special purpose districts in utility contracts with the private sector. We helped develop the form and content of developer extension agreements and developer fee agreements used statewide by cities and special purpose districts, and we continue to negotiate and draft such contracts for municipalities.

For more information, visit our website, [www.foster.com](http://www.foster.com).

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Grover Cleveland has practiced law at Foster Pepper & Shefelman since 1992. He represents governments throughout Washington on a wide range of municipal law issues. Grover's practice also emphasizes government contracts, large infrastructure projects and municipal litigation, including cases involving state constitutional law issues. He received his J.D., *magna cum laude*, from St. Louis University, and his B.A. from Washington University. Grover practices in our Seattle office.

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# SUPREME COURT INVALIDATES AVAILABILITY CHARGES

BY GROVER E. CLEVELAND

In a recent decision that could eliminate a source of revenue for utilities statewide, the State Supreme Court invalidated City of Soap Lake water and sewer availability charges. The case, *Samis Land Company v. Soap Lake*, involved a challenge to a \$60 annual fee (known as a "standby" charge in Soap Lake). The City applied the charges to property owners who had access to city water or sewer utilities but had chosen not to connect. The availability charges were important to the City of Soap Lake, because a large percentage of property in the City is undeveloped.

The Samis Land Company challenged the availability charges as unconstitutional property taxes, relying on the Seattle street utility case, *Covell v. Seattle*. Samis asserted that the availability charges were actually disguised property taxes rather than regulatory fees.

The City of Soap Lake prevailed at the trial court level, but the Court of Appeals reversed, and the City appealed to the State Supreme Court. At the Supreme Court, Foster Pepper & Shefelman ("FP&S") filed an amicus brief in support of Soap Lake on behalf of the Association of Washington Cities, the Washington Association of Sewer and Water Districts, and the City of Ocean Shores. FP&S subsequently associated as counsel for the City of Soap Lake in defending the availability charges before the Supreme Court.

The Supreme Court analyzed the Soap Lake charges using the three-part test articulated in *Covell*. Under the *Covell* test the Court determines whether a charge is a valid regulatory fee or an invalid tax by evaluating:

1. Whether the primary purpose of the legislation is to regulate or to collect revenue to finance broad-based public improvements that cost money;
2. Whether the money collected from the fees is segregated and allocated exclusively to regulating the entity or activity being charged; and
3. Whether a direct relationship exists between the rate charged and either a service received by the fee payers or a burden to which they contribute.

*"The Samis case spells trouble for governmental utility and fee ordinances that do not clearly articulate a regulatory purpose or demonstrate the relationship between the fee and the service to the rate payer."*

With respect to the first prong of the test, the Court found that early on in the litigation in response to requests for admissions, Soap Lake had conceded that the primary purpose of the availability charges was to generate revenue. Therefore, the Court found that under the first prong of the test, Soap Lake's charge resembled a tax.

Evaluating the availability charge under the second prong of the *Covell* test, the Court also ruled that the money collected was not allocated exclusively to regulating the entity or activity being charged. Based on the record below, the Court found that the properties being charged were not subject to any identifiable utility-related "regulatory" activity. Thus, under this prong, as well, the Court determined that the City's availability charge was more like a tax than a regulatory fee.

Finally, the Court found that there was no direct relationship between the charge and

# I-722 UPDATE

BY HUGH D. SPITZER


Washington Supreme Court oral arguments on Initiative 722 occurred on June 12. Significant oral arguments such as this one are typically broadcast on TVW, and tapes of those arguments can be obtained from TVW.

Initiative 722 would repeal tax and fee increases imposed during the last six months of 1999, and require a refund of the tax and rate increases that had been collected. The measure would also put a cap on the effective increase in the value of property for tax assessment purposes.

Earlier this year, Thurston County Superior Court Judge Christine Pomeroy ruled that Initiative 722 is unconstitutional because it (1) violates the State Constitution's single subject and subject-in-title rules, (2) implicitly amends state law without constitutionally required disclosure, (3)

violates the constitution's requirement that taxation be uniform, and (4) allows refunds of properly-enacted taxes and fees in a manner that causes unconstitutional gifts to be made.

Foster Pepper & Shefelman PLLC serves as "class counsel" for the group of plaintiffs composed of all non-county municipalities in Washington State. Tom Ahearne is the lead FPS litigator on the case, and Tom has also been designated as the lead communications counsel for all the plaintiffs on procedural matters.

We look forward to the resolution of this important case. Additional information about the I-722 litigation can be obtained from FPS attorneys Hugh Spitzer at 206-447-8965, and Tom Ahearne at 206-447-8934. 

## SUPREME COURT

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any service the fee payers received or a burden to which they contributed. The Court acknowledged that finding a "direct relationship" has been a decisive consideration in many other cases in which charges have been upheld. The Court again relied on admissions to make a finding adverse to the City. The Court found that the City had admitted that liability for its availability charges did not arise from Samis' use of a City service. The Court further found that the record did not contain any evidence that the vacant properties burdened the City's water or sewer systems.

As a result, the Court ruled that the Soap Lake availability charges were "thinly disguised" taxes, and because they were not based on the value of property, they violated the tax uniformity requirements of the State Constitution.

In dissent, Justice Johnson argued that the regulatory purpose of the availability charges was "self-evident," because the very purpose of water and sewer facilities is to protect public health. The last

footnote of the dissent provides the critical lesson of the case: governments can no longer assume that regulatory purposes of their utility facilities is obvious and will have to carefully justify regulatory fees in the future. As Justice Johnson put it:

"Presumably, if Soap Lake had drafted the relevant ordinances more specifically to spell out the regulatory purpose, the ordinances would survive even under the majority's approach."

The *Samis* case spells trouble for governmental utility and fee ordinances that do not clearly articulate a regulatory purpose or demonstrate the relationship between the fee and the service to the rate payer. Municipalities should review their ordinances with counsel in light of the *Samis* decision. 

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Hugh also chairs the Washington State Affordable Housing Advisory Board. He was appointed by Governor Locke in 2000.

Hugh received his B.A., cum laude, from Yale University, his J.D. from the University of Washington School of Law, and an L.L.M. from the University of California.

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## PROPERTY TAX RELIEF IN URBAN CENTERS

BY HUGH D. SPITZER

A little-used property tax exemption first enacted in 1995 is being discovered and applied to help the revitalization of downtown areas.

Chapter 84.14 RCW allows for a ten-year property tax exemption for new or rehabilitated multi-unit housing located in a "residential targeted area" designated by a city with a population of at least 50,000. In addition, this exemption can be used in the largest city or town in any county that plans under the Growth Management Act, regardless of whether or not that municipality has 50,000 residents.

To make the property tax exemption available, a city must

designate a residential targeted area after a public hearing process. The area must be within an "urban center" as determined by the city council, and the area must lack convenient residential housing to meet the needs of people who would like to live there.

The basic idea is that the property tax exemption will be used to encourage the construction or rehabilitation of housing in downtown areas that have encountered some deterioration while housing, malls and office development have occurred on the fringe of cities or in suburbs.

Once a residential targeted area has been created, an owner of property there may receive a ten-year tax exemption by following an application procedure set forth in the statute. Any project that

receives the tax exemption needs to have at least four new housing units, or in the case of a rehabilitation, at least four additional multi-family units.


The statute includes stiff penalties if the housing units are converted for another use within the ten-year period.

This obviously useful property tax exemption has not been implemented frequently, perhaps because of lack of knowledge among local governments and

developers. However, Olympia and Vancouver, among others, have recently utilized this mechanism, and as more experience is gained with this property

*"The basic idea is that the property tax exemption will be used to encourage the construction or rehabilitation of housing in downtown areas that have encountered some deterioration while housing, malls and office development have occurred on the fringe of cities or in suburbs."*

tax exemption it should spread in popularity. Seattle started providing the exemption several years ago, and the owners of 800 Seattle housing units received the tax benefit. However, the Seattle City Council then imposed low-income set-aside requirements, and applications for the exemption virtually disappeared.

From a practical standpoint, this exemption may be more effective as a silent subsidy for moderate income housing than for low-income housing. If used appropriately, developers and local governments should find it particularly useful in their effort to encourage more housing that is compatible with growth management goals. 

# SILVER LAKE WATER DISTRICT PREVAILS IN RATE CASE

BY P. STEPHEN DIJULIO

Silver Lake Water District (“District”) provides water and sewer services to residents in an area north of Mill Creek in Snohomish County. As part of its comprehensive planning, the District determined to construct a reservoir, an inter-tie with the City of Everett and other improvements necessary to provide services within the District. Financing for the improvements was based, in part, on an increased connection charge for new development.

In 1994, Silver Firs Town Homes (the “Developer”) began development of 180 residential units within the District. The Developer and the District entered into a contract under which the Developer would construct an extension between their project and the District’s system. The contract provided that the “District will not be obligated to allow service connections to its system until all General facilities (water) and Connection (sewer) charges in effect on the date of application for service have been paid.” On February 23, 1995, the District adopted its 1995 Comprehensive Water Plan Amendment (the “1995 Amendment”). Later that month, the District published notice of a public meeting to consider adjustments to the water and sewer rates. On March 16, 1995, the District adopted rate-increase resolutions. The new service rates were effective on March 20, 1995. Those resolutions, however, allowed for payment of preexisting charges (“old rates”) for projects in which building permits were issued prior to May 1, 1995.

As of April 20, 1995, the Developer held building permits for four of the 180 lots. The Developer tendered payment for hook-up of all of the lots at the District’s old rates. The District rejected the Developer’s tender, insisting that it pay hook-up fees based upon the recently adopted comprehensive plan. The amount in dispute was more than \$300,000.

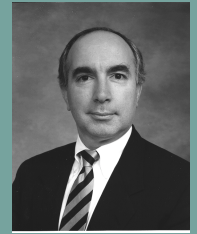
The Developer filed a claim with the District, and later instituted a lawsuit in Snohomish County Superior Court. The Superior Court dismissed the Developer’s claims on summary judgment. The Court of Appeals affirmed the Superior Court’s decision on September 18, 2000 (*Silver Firs v. Silver Lake Water District*, 103

Wn.App. 411, (2000)). One of the primary issues before the Court of Appeals was whether or not the legislature intended to condition passage and implementation of rate increases and charges upon an approved comprehensive water plan. The Developer, relying on former RCW 57.08.010(3)(a), argued that the District can set rates and charges only based on an effective comprehensive plan and the comprehensive plan and any amendments thereto are *not effective* until adopted by the District and approved by the county and state agencies. According to the Developer, because all approvals were not in place before implementation of the rate and charge increases, the 1995 Amendment was adopted but not effective, and thus, the increases were premature. The Court of Appeals initially noted that the 1995 Amendment was not “effective” when the new rates and connection charges were passed and implemented. Nonetheless, the Court rejected the Developer’s argument and held that former RCW 57.08.010(3)(a) requires that the connection charges be based on an “adopted” plan, not an “adopted *and effective plan*.” The Court further reasoned that “[a]doption is the first step, and the validity of the connection charges is not contingent upon approval by the county engineer or legislative authority.” The Court concluded that the “District’s authority to pass and implement new connection charges depends only upon adoption of the comprehensive plan and is not conditioned upon county approval of the plan.”

The Court also held, contrary to the Developer’s assertions, that the District was not subject to regulation by the Washington Utilities and Transportation Commission or requirements of the Consumer Protection Act. The Developer also argued that the District is required to provide notice of proposed rate changes and consideration of amendments to the comprehensive plan, and that its failure to do so invalidates both. The Court, however, determined that, under Title 57 RCW, water districts are not required to provide particular or special notice of its regularly scheduled meetings. Finally, the Developer contended

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## SILVER LAKE WATER DISTRICT

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that the District's failure to provide notice violated procedural due process. The Court found this argument to be without merit because the District gave public notice of the hearing at which the rate increases were adopted.

The Developer subsequently filed a Petition for Review with the Washington State Supreme Court. After months of delay, the Supreme Court denied in April the Developer's Petition for Review (*Silver Firs v. Silver Lake Water District*, 103 Wn.App. 411, *review denied*, 143 Wn.2d 1013 (2001)). The courts have now rejected all of Developer's claims, and validated the District's plan and financing program. The District is moving forward with its utility system development, with funding firmly established. Foster Pepper & Shefelman PLLC attorneys represented the District at all levels of this litigation. 

## EDITOR'S COMMENT

*Municipal & Public Finance News* is a periodic publication of Foster Pepper & Shefelman PLLC and should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general information purposes only, and you are urged to consult your own lawyer concerning your own situation and any specific legal questions you may have.

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