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9 CITIZEN'S ASSOCIATION OF SUNSET BEACH

**ELECTRONICALLY
FILED**
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CIVIL COMPLEX CENTER

Dec 09 2010

ALAN CARLSON, Clerk of the Court
by M. NORDMAN

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 IN AND FOR THE COUNTY OF ORANGE

12 CITIZEN'S ASSOCIATION OF SUNSET)
13 BEACH,)

14 Petitioner/Plaintiff,)

15 vs.)

16 ORANGE COUNTY LOCAL AGENCY)
17 FORMATION COMMISSION, a)
18 governmental entity; the CITY OF)
19 HUNTINGTON BEACH, a municipal)
20 corporation; and DOES 1 through 50,)
21 inclusive,)

22 Respondents/Defendants.)

CASE NO. 30-2010-00431832

**VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

Judge Steven Perk
C32

General Allegations

Petitioner/Plaintiff Citizen's Association of Sunset Beach ("CASB") alleges as follows:

1. Through this Verified Petition and Complaint, CASB seeks orders: (a) enjoining Respondent/Defendant Orange County Local Agency Formation Commission (OC LAFCO) from taking any further action on the annexation application of Respondent/Defendant City of Huntington Beach ("the City"), including recording of a notice of completion, until the legal issues raised in this Petition and Complaint are resolved; (b) directing the OC LAFCO to either reject the City's island annexation application or impose as a condition of the City's "island" annexation application that the City first obtain a favorable vote by the residents of Sunset Beach in an election pursuant to Proposition 218 regarding imposition of all of the City's special taxes, including but not limited to the utility tax and the property tax override; and (c) directing the City

1 to either revise its annexation application to seek an annexation that is subject to protest
2 proceedings, or to obtain a favorable vote by the residents of Sunset Beach in an election pursuant
3 to Proposition 218 regarding imposition of all of the City's special taxes as a condition of pursuing
4 an "island" annexation.

5 **The Parties**

6 2. Petitioner/Plaintiff CASB is a nonprofit mutual benefit corporation formed in
7 accordance with the laws of the State of California, with its principal place of business in Orange
8 County, California. The members of CASB are property owners, residents, and business operators
9 in Sunset Beach, California, the territory that is the subject of the annexation at issues in this
10 Petition and Complaint. The members of CASB are and will be directly affected by this
11 annexation. CASB therefore has standing to file this Petition and Complaint just if it had been
12 filed by CASB's members.

13 3. Respondent/Defendant OC LAFCO is, and at all times relevant to this Petition and
14 Complaint has been, an agency of the state of California, located in Orange County, California,
15 and organized and operated pursuant to the Cortese-Knox-Hertzberg Act.

16 4. Respondent/Defendant City of Huntington Beach is a municipal corporation
17 formed in accordance with the laws of the state of California, and located in Orange County,
18 California.

19 5. The true names and capacities, whether individual, corporate, associate, or
20 otherwise, of Respondents and Defendants named fictitiously herein as DOES 1 through 50,
21 inclusive, are unknown to CASB, which therefore sues those DOES by their fictitious names.
22 CASB will amend this Petition and Complaint to state their true names and capacities when
23 ascertained. Each such DOE is, in some manner, responsible, liable and/or obligated to CASB in
24 connection with the occurrences, transactions, and obligations alleged herein and/or affected by
25 the relief requested.

26 6. DOES 1 through 25 were at all times relevant, the employees and/or agents of one
27 of the named Respondents and Defendants and were acting in the course, purpose, and scope of

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1 such employment and/or agency in acting or failing to act as alleged herein. DOES 26-50 are
2 unknown entities or individuals that are unrelated to the named Respondents and Defendants.

3 7. Venue is proper in this County pursuant to Code of Civil Procedure sections 394
4 and 395 because the Respondents/Defendants are situated within this County and the events giving
5 rise to CASB's claims arose in this County.

6 **The Annexation Process**

7 8. The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000
8 (Government Code § 56000, et seq.) ("the Act") establishes in each of California's counties an
9 agency known as a Local Agency Formation Commission, or "LAFCO." The purpose of each
10 LAFCO is to encourage the orderly and efficient growth and extension of services within each
11 county, and to discourage urban sprawl. (Gov. Code § 56001.) Each LAFCO has exclusive
12 authority for the initiation, conduct, and completion of changes of organization and
13 reorganizations for cities and districts. (Gov. Code § 56100.) An annexation is a change of
14 organization. (Gov. Code § 56021.) An annexation is the inclusion, attachment, or addition of
15 territory to a city or district.

16 9. An annexation may be initiated either by a proposal by a LAFCO, a petition of
17 property owners, or a resolution by a city or district. (Gov. Code § 56650.)

18 10. After an annexation application is properly filed with a LAFCO, the LAFCO's
19 Executive Officer schedules the matter for hearing and prepares a report with his or her
20 recommendations regarding the application. (Gov. Code § 56665.) Within 35 days after the
21 hearing, the LAFCO must adopt a resolution that approves or disapproves the proposal, with or
22 without conditions. (Gov. Code § 56880.)

23 11. A LAFCO has broad discretionary power to "approve or disapprove, with or
24 without amendment, wholly, partially, or conditionally" an annexation request. (Gov. Code §
25 56375(a).) Among the many conditions that a LAFCO may impose on its approval of an
26 annexation application are the levying or fixing and the collection of general and special taxes, and
27 the approval by the voters of those taxes. (Gov. Code § 56886(b) and (s).)

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1 12. Any territory annexed to a city shall be subject to the levying, fixing, and collection
2 of any previously authorized taxes and assessments of the city. (Gov. Code § 57330.)

3 13. In most cases, the Act allows the residents and landowners in an area that is the
4 subject of an annexation to challenge the annexation through protest proceedings. (Gov. Code §
5 57000 et seq.) The Executive Officer schedules a protest hearing, and at the conclusion of that
6 hearing, the LAFCO counts the number of written protests. (Gov. Code § 57052.) The annexation
7 is terminated if fifty percent of the registered voters in the territory to be annexed file written
8 protests. (Gov. Code § 57075(a)(1).) If more than twenty-five percent but less than fifty percent of
9 the registered voters residing in the subject territory file written protests, the annexation must be
10 confirmed by a vote. (Gov. Code § 57075(a)(1).)

11 14. Not all annexations involve protest proceedings. The Act sets out a process for the
12 annexation of so-called unincorporated islands to the cities that surrounded them. (Gov. Code §
13 56375.3.) In an island annexation, if a City-initiated annexation meets the required criteria, the Act
14 provides that “in addition to those powers enumerated in Section 56375,” a LAFCO shall approve
15 the annexation proposal and waive protest proceedings. (Gov. Code § 56375.3(a)(1).)

16 15. After a LAFCO adopts a resolution making a determination on any annexation
17 application, any person or affected agency may file a request for reconsideration. (Gov. Code §
18 56895(a).) After a hearing on a reconsideration request, a LAFCO may approve or deny the
19 request for reconsideration. If it approves the request, a LAFCO is required to adopt a resolution
20 making determinations that shall supersede the resolution that it previously issued. (Gov. Code §
21 56895(g).)

22 **Huntington Beach Seeks An Island Annexation of Sunset Beach**

23 16. Sunset Beach is an unincorporated beachfront community in Orange County,
24 California. Sunset Beach was established as a town in 1904, and is comprised of approximately
25 134 acres with about 1200 permanent residents. It is generally surrounded by the City of Seal
26 Beach to the north, the Pacific Ocean to the west, and the City of Huntington Beach to the north,
27 east, and south. OC LAFCO Executive Officer Joyce Crosthwaite notes in her December 9, 2010
28 report to the OC LAFCO that, “despite being surrounded by newer residential and commercial

1 development, the community has retained its own unique identity for over the past one hundred
2 years.”

3 17. In July of 2009, the OC LAFCO placed Sunset Beach under the sphere of influence
4 of Huntington Beach.

5 18. In July of 2010, through an organization called the Sunset Beach Community
6 Association (“SBCA”), residents of Sunset Beach submitted an application to the OC LAFCO to
7 incorporate Sunset Beach as a city. That incorporation effort stalled a few months later when the
8 SBCA treasurer inexplicably refused to send a check for \$100,000.00 to the OC LAFCO to
9 complete the incorporation application process. The SBCA Board later voted to return the
10 \$100,000.00 to the individuals who contributed that money. Other than some mutual members,
11 there is no relationship between SBCA and Plaintiff/Petitioner CASB.

12 19. In July of 2010, the City submitted an application to the OC LAFCO to annex
13 Sunset Beach. Rather than seek to annex Sunset Beach under general annexation provisions that
14 would allow the residents of Sunset Beach an opportunity to challenge the annexation through
15 protest proceedings, the City is seeking to annex Sunset Beach under the forced “island”
16 annexation provisions in Government Code section 56375.3 that apply to unincorporated islands
17 that do not exceed 150 acres. In an island annexation, the residents do not get the opportunity to
18 protest or vote on whether to be annexed.

19 **Proposition 218 Affords Sunset Beach Residents A Vote On Whether To Approve**
20 **Imposition of Huntington Beach’s Special Taxes**

21 20. Proposition 218, officially titled the “Right to Vote on Taxes Act,” was approved
22 by California voters on November 5, 1996. Proposition 218 amended the California Constitution
23 by adding articles XIII C and XIII D that bar local governments from imposing, extending, or
24 increasing general and special taxes without first giving the electorate a vote on whether to
25 approve such taxes.

26 21. The City imposes certain special taxes on its residents, most notably a User Utility
27 Tax and a pension-related property tax override. Sunset Beach residents do not currently pay these
28 taxes. Until November of 2010, the Huntington Beach City Council attempted to assuage the

1 concerns of Sunset Beach residents by assuring them that post-annexation the City would not
2 impose its utility tax and property tax override on Sunset Beach residents.

3 22. On April 27, 2010, Ralph Anderson & Associates issued a report entitled Final
4 Report Sunset Beach Annexation Study for the City of Huntington Beach, a copy of which is
5 publicly available on the OC LAFCO website. That report notes on page 10 that:

6 It should be noted, however, that in the view of LAFCO legal staff, the
7 Utility Users Tax could be imposed only if the annexation were processed
8 as a normal inhabited unincorporated area requiring a vote of the Sunset
9 Beach electorate. Since it is being pursued as an “island” annexation, not
involving a vote of those being annexed, Proposition 218 would bar the
imposition of this tax to this area according to LAFCO.

10 23. Although Government Code section 57330 compels the City to impose all
11 previously authorized taxes (including the utility tax and property tax override) on the residents of
12 any territory that it annexes, Proposition 218 affords the residents of Sunset Beach a constitutional
13 right to vote whether to approve the imposition of those taxes.

14 **CASB Has Asked The OC LAFCO To Acknowledge Sunset Beach Residents’**
15 **Proposition 218 Rights By Imposing Conditions On The Annexation**

16 24. In July of 2010, residents of Sunset Beach formed a nonprofit mutual benefit
17 corporation – Petitioner/Plaintiff Citizen’s Association of Sunset Beach (“CASB”) – to, among
18 other things, represent the interest of its members by supporting the incorporation of Sunset Beach
19 and opposing its annexation by the City.

20 25. On July 15, 2010, counsel for CASB sent a letter to the OC LAFCO advising the
21 OC LAFCO that CASB believed that the City was misleading Sunset Beach residents by stating
22 that if the annexation occurs, the City would not impose its utility tax on Sunset Beach residents.
23 CASB believed that the City would ultimately conclude that the law compels the City to impose
24 all of its taxes on Sunset Beach residents and that the City would not give Sunset Beach residents
25 a vote on whether to approve those taxes. CASB requested that the OC LAFCO require the City to
26 obtain a favorable Proposition 218 vote by Sunset Beach residents regarding the utility tax as a

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1 condition of the annexation. CASB sent another such request to the OC LAFCO on September 20,
2 2010. The OC LAFCO did not respond to either of these requests.

3 **The City Recently Announced That It Is Going To Impose All Of Its Taxes On Sunset**
4 **Beach Residents Without Giving Them A Vote**

5 26. Despite repeated assurances from the Huntington Beach City Council to the
6 contrary, and as predicted by CASB, on November 9, 2010, about one month before the OC
7 LAFCO hearing on the City's annexation proposal, the Huntington Beach City Attorney notified
8 Sunset Beach residents for the first time that the City would impose all of its taxes on Sunset
9 Beach residents post-annexation. In her November 9, 2010, letter to the SBCA, the City Attorney
10 stated that:

11 This letter is to advise you that all taxes currently charged to residents of
12 Huntington Beach will be charged to the residents of Sunset Beach post-
13 annexation. These taxes include utility user tax, business license tax,
14 property tax override, and the library tax, among other various taxes and
property-related fees. The tax will be levied using the same methodology
as currently in place for the residents of Huntington Beach.

15 27. On November 16, 2010, counsel for CASB wrote to the OC LAFCO, advising the
16 OC LAFCO of the City's decision to apply all of its taxes on Sunset Beach residents post-
17 annexation, and again requested that the OC LAFCO impose a condition on the annexation that
18 the City first obtain a favorable vote by Sunset Beach residents approving imposition of the
19 Huntington Beach special taxes. The OC LAFCO did not respond to this request.

20 **The OC LAFCO Approved The Sunset Beach Island Annexation Without The**
21 **Conditions Requested by CASB**

22 28. On December 6, 2010, the Huntington Beach City Council adopted Council
23 Resolution No. 2010-100 ("the City's Resolution of Application"), which approved the City's
24 application to annex Sunset Beach. The City's Resolution of Application completed its application
25 to the OC LAFCO to annex Sunset Beach.

26 29. On December 8, 2010, the OC LAFCO held a hearing on the City's annexation
27 proposal and voted to adopt OC LAFCO Resolution No. IA 10-05, which approved the Sunset
28 Beach annexation to the City. In so doing, the OC LAFCO found that the City's proposal met the

1 criteria for an “island” annexation under Government Code section 56375.3. The OC LAFCO’s
2 Resolution imposes some conditions on the City’s annexation of Sunset Beach. However, the OC
3 LAFCO Resolution does not impose a condition that the City first obtain a favorable vote by the
4 Sunset Beach residents under Proposition 218 regarding imposition of the City’s special taxes,
5 including but not limited to the City’s Utility Users Tax and its property tax override.

6 **FIRST CAUSE OF ACTION**

7 **Writ of Mandamus Addressed to the OC LAFCO**
8 **[Code Civ. Proc., § 1085; Gov. Code § 56375.3 and 56886]**

9 30. CASB realleges and incorporates, by this reference, paragraphs 1 – 29, inclusive,
10 set forth above in full.

11 31. The Cortese-Knox-Hertzberg Act requires the OC LAFCO to approve City-
12 proposed island annexations that meet the criteria under Government Code section 56375.3. The
13 OC LAFCO has adopted Policy and Procedural Guidelines for Annexation of Small Islands that
14 are consistent with Government Code section 56375.3, and that allow the OC LAFCO to approve
15 an island annexation if all applicable conditions apply. One of those conditions is that “the
16 territory will benefit from the annexing city.” However, Sunset Beach will not benefit from
17 annexation by the City of Huntington Beach where, as here, the City will impose special taxes on
18 the residents of Sunset Beach in clear violation of the residents’ constitutional rights under
19 Proposition 218. The City’s annexation proposal therefore does not meet all of the criteria for an
20 island annexation set forth in the OC LAFCO’s Policies and Procedures and in Government Code
21 section 56375.3. The OC LAFCO should have rejected the City’s island annexation application
22 because it did not meet all of the criteria for an island annexation. It was an abuse of discretion for
23 the OC LAFCO to conclude that the City’s proposal met all of the island annexation criteria and to
24 approve the application.

25 32. Alternatively, the OC LAFCO could have legally approved the City’s island
26 annexation application subject to the condition, requested by CASB, that the City first obtain a
27 favorable vote by the residents of Sunset Beach under Proposition 218 regarding imposition of the
28 City’s special taxes.

1 annexation provisions set forth in Government Code section 56375.3, which do not allow the
2 residents of Sunset Beach protest proceedings.

3 39. In attempting to satisfy concerns by the Sunset Beach residents about this
4 annexation, the Huntington Beach City Council repeatedly assured the residents of Sunset Beach
5 that they would not be subject to the Huntington Beach special utility tax and property tax
6 override post-annexation.

7 40. Government Code section 57330 requires the City to subject the residents of Sunset
8 Beach to the levying or fixing and collecting of any previously authorized taxes. Consequently, on
9 November 9, 2010, the Huntington Beach City Attorney notified the residents of Sunset Beach for
10 the first time that those residents would in fact be required to pay the Huntington Beach utility tax
11 and property tax override post-annexation.

12 41. Proposition 218 provides the residents of Sunset Beach with a constitutional right
13 to vote on whether to accept new taxes like the Huntington Beach utility tax and property tax
14 override that the City must impose upon them as a result of this annexation. Consequently, the
15 City cannot legally utilize the “island” annexation provisions set forth in Government Code
16 section 56375.3 unless it first obtains a favorable vote by the residents of Sunset Beach in an
17 election pursuant to Proposition 218 regarding imposition of all of the City’s special taxes,
18 including but not limited to the utility tax and property tax override. Alternatively, the City can
19 revise its annexation application to seek a standard annexation that is subject to protest
20 proceedings.

21 42. CASB has exhausted any and all conditions precedent to the filing of this action
22 and has exhausted all available administrative remedies.

23 43. CASB has no plain, speed, and adequate remedy in the ordinary course of law, and
24 therefore seeks the relief requested pursuant to Code of Civil Procedure section 1084 *et seq.*

25 44. As the City has expressed its clear and unequivocal intent to tax the residents of
26 Sunset Beach post-annexation in violation of their right to a vote under Proposition 218, CASB
27 seeks an order compelling the City to either revise its annexation application to seek an annexation
28 that is subject to protest proceedings, or to obtain a favorable vote by the residents of Sunset

1 Beach in an election pursuant to Proposition 218 regarding imposition of all of the City's special
2 taxes as a condition of pursuing its island annexation.

3 **THIRD CAUSE OF ACTION**

4 **Declaratory Relief Against The OC LAFCO and the City of**
5 **Huntington Beach**
6 **[Code Civ. Proc., § 1060]**

7 45. CASB realleges and incorporates by reference paragraphs 1 through 44, inclusive,
8 set forth above in full.

9 46. An actual controversy exists between CASB, the OC LAFCO, and the City with
10 regard to the apparently conflicting provision of Government Code section 56375.3 (the island
11 annexation provisions), Government Code section 57330 (requiring an annexing city to apply all
12 of its taxes to an annexed territory), and Proposition 218 (barring new taxes without a vote).

13 47. CASB desires a judicial determination of its members' rights and duties and a
14 declaration that OC LAFCO cannot approve, and that the City cannot annex Sunset Beach under
15 the island annexation provisions of Government Code section 56375.3 unless the City first obtains
16 a favorable vote by the residents of Sunset Beach under Proposition 218 regarding approval of the
17 imposition of all of the Huntington Beach special taxes.

18 48. A judicial declaration is necessary and appropriate at this time in order that CASB
19 may ascertain the rights and duties of its members. Unless such a declaration is rendered, CASB
20 members (and other Sunset Beach residents) will suffer a loss of their rights and property in
21 violation of the law.

22 49. CASB requests a judicial determination of this controversy.

23 **Prayer**

24 WHEREFORE, CASB prays for judgment against the OC LAFCO and the City as follows:

25 1. For a preliminary injunction enjoining the OC LAFCO from taking any further
26 action on the City's annexation application, including but not limited to recording a notice of
27 completion, until the legal rights of the parties are determined by this Court.

28 2. For a writ of mandate under Code of Civil Procedure section 1085, compelling the
OC LAFCO to set aside Resolution No. IA 10-05, and to either reject the City's island annexation

1 application because it does not meet all of the island annexation criteria, or to condition its
2 approval of the City's application on the City first obtaining a favorable vote by the residents of
3 Sunset Beach under Proposition 218 regarding imposition of the City's special taxes;

4 3. For a writ of mandate under Code of Civil Procedure section 1085, compelling the
5 City of Huntington Beach to either amend its annexation application to seek general annexation
6 that is subject to protest proceedings, or to first obtain a favorable vote by the residents of Sunset
7 Beach in an election pursuant to Proposition 218 regarding imposition of all of the City's special
8 taxes as a condition of pursuing its island annexation;

9 4. For a judicial declaration pursuant to Code of Civil Procedures section 1060 that
10 Proposition 218 bars the OC LAFCO from approving, and the City of Huntington Beach from
11 annexing Sunset Beach under the island annexation provisions of Government Code section
12 56375.3 unless there is first a favorable vote by the residents of Sunset Beach under Proposition
13 218 regarding approval of the imposition of all Huntington Beach special taxes;

14 5. For the costs of suit;

15 6. For attorneys' fees as allowed by law; and

16 7. For such other and further relief as the Court deems proper.

17 Dated: December 9, 2010

18 Respectfully submitted,
19 STERN, VAN VLECK & McCARRON, LLP

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21 _____
22 John C. McCarron
23 Attorney for CITIZEN'S ASSOCIATION OF SUNSET
24 BEACH
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VERIFICATION

I, Jack Markovitz, declare as follows:

I am an officer of the Citizen's Association of Sunset Beach, a party in the above-entitled action, and I am authorized to make this verification for and on its behalf.

I have read the foregoing Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief and know the contents thereof. I am informed and believe that the matters stated in the foregoing document are true, and on that ground I allege that the matters stated therein are true.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct.

Executed on this 8th day of December, 2010, at SUNSET BEACH, California.

