
MENTONE MATTERS

Published Occasionally - When We Have News

Vol. 1, No. 18 BY AND FOR MENTONITES ABOUT MENTONE, CALIFORNIA DECEMBER 2018

MENTONE CHAMBER JOINS THE FIRE TAX LAWSUIT!

On October 11, 2018, a complaint was filed in San Bernardino County Superior Court on behalf of the Red Brennan Group, based in San Diego; Lucerne Valley Economic Development Association; Johnson Valley Improvement Association and Homestead Valley Community; the Mentone Chamber of Commerce; Henry E. Hallmark, Kristine E. Hallmark; Eric H. Steinmann, residents of Wrightwood. The suit challenges the fire tax levied in this County by the Board of Supervisors and was filed against them and the Board of Supervisors of the County Fire District. According to the complaint, both Boards were sued because "The Board of Supervisors of the County of San Bernardino ("Board") is, and at all times mentioned was, the governing body that oversees the operation of county government in San Bernardino County. The Board controls the San Bernardino County Fire Protection District ("Fire District"), is a special district formed under the laws of the state of California, and the same individuals comprise both boards. The Fire District is a legally distinct entity from the Board, however, the Board also acts as the board of directors for the Fire District. As such, the same individuals comprise both panels and both entities are controlled by the same individuals."

County Supervisor (now going to the Assembly) James Ramos had introduced the measure and then voted in its favor, in the amount of \$157 per year, with promised yearly increases. As Mentone Matters reported in October, this "replaces" a previous, mountain-area-only fire tax on properties that were especially subject to wildfires. Instead, the present tax is imposed on every property in the County except some cities and unincorporated areas within the sphere of influence of the City of Montclair.

The lawsuit seeks a preliminary injunction "preventing the levy of an illegal special tax and an unconstitutional bar on the exercise of the right to vote of affected individuals." According to the complaint's Statement of Facts "The Fire District was formed through a Local Area Formation Commission ("LAFCO") process in 2008 to provide fire, rescue and emergency medical services under the provisions of Health & Safety Code 13950 and to create a County Service Area ("CSA") in the Helendale/Silver Lakes area of the County of San Bernardino. The Fire District is comprised of four geographic quadrants and ten separate Fire Protection ("FP") service zones within those four quadrants. The services provided by the Fire District are primarily funded through property taxes, contract revenue, and assessment revenues. The Fire District also receives funding from the County of San Bernardino by way of a Memorandum of Understanding ("MOU") entered into between the Fire District and the County of San Bernardino to further enhance the services provided in areas covered by the Fire District. The Board has been unable to adequately manage the budget of the Fire District, and the amount of money required for the Fire District to operate continues to increase each year. The Fire District has been meeting its budget deficits by using Fire District budget reserves, paired with the receipt of additional funds transferred from the County of San Bernardino's general fund. This transfer of monies from the general fund has been authorized by the Board via the MOU between the County and the Fire District for service 'enhancements.' Because the Fire District continues to engage in deficit spending, the Board has approved a new real property tax on all unincorporated parcels of land in San Bernardino County. This new real property tax also will be extended to some incorporated areas of land in San Bernardino County. (Continued on p. 2)

IF YOU HAVE A WATER LEAK DON'T CALL REDLANDS' CITY WATER DEPARTMENT; CALL THE POLICE INSTEAD!

The water department is on vacation from December ____ to January 7, 2019. A new small water leak developed in Mentone. MM called the Water Department; MM was then re-routed to the Redlands Police Department dispatcher (non-emergency number), who took the information. MM was then called back by someone on call with the Water Department, who asked the information again. Several days later, someone is supposed to come out. Apparently, there was a gas issue, as well, according to a local resident.



If interested in attending, call to make reservations.

Notice copied from Facebook

OP-ED

Sorry, readers, that there has been no little or news to report: MACA and the Chamber were dark during December, and the Chamber also did not meet in November. When MACA meetings resume in January, MM hopes that there will be something positive about having a school crossing guard on Crafton, like there is on Wabash. Also, your editor has been swamped with personal tasks and is still awaiting the completion of MentoneMatters.com.

Some readers may wonder where the fire tax [see lead story] came from, particularly for properties in the Valley. The Board of Supervisors sneakily took a 12-year-old vote in one territory and applied it to the whole County. We quote extensively from the complaint because it has so many important details: the excuses for taxing everyone, what is said will be done and what is really done, and so on. MM believed that readers would not want to wade through all 113 paragraphs of legalese, necessarily repetitious. Readers may note that one of the grounds of the lawsuit is CEQA; that was the point on which the Greenspot folks won; hopefully, if the Constitutional grounds are ignored, the Court will still look at the CEQA violations. In most Civil cases "discovery" is done, with each side being able to submit their questions and requests for evidence to the opposing side. It is not presently being conducted in this case but we would be interested to know exactly how many protests the County acknowledges receiving, out of the total number actually sent out.

Presumably the Chamber is getting a "free ride" as to the attorney fees and costs because, although MM attends its meetings, the lawsuit was only tangentially referenced in the October meeting and, to MM's knowledge, no funds were voted to pay for Mentone's participation.^{MM}

MENTONE MATTERS
mentonematters@gmail.com

Published occasionally, as we have news to report

FIRE TAX (cont'd)

"To accomplish this, the Board has proposed adding all unincorporated parcels within San Bernardino County into the FP service zones and levying a new special tax on each parcel. Parcels in incorporated areas within San Bernardino County have also been imposed with this new special tax. . . . When Service Zone FP-5 was created, a special tax election was held for imposition of a Special Tax to fund specific fire services. That Special Tax was submitted to all registered voters in the affected Helendale/Silver Lakes area for a mail vote in

accord with the mandate of California Constitution Article XIII C. . . . 'The purpose for the Special Tax is to convert the CSA 38 Fire Station #4 from a paid-call fire station operation to a 24-hour per day full-time firefighter and firefighter/paramedic-staffed fire station within the improvement zone.' . . . approved by voters in 2006 in the Helendale/Silver Lakes area on all unincorporated parcels and some incorporated parcels within San Bernardino County. . . . the \$157.26 charge that accompanies the FP-5 service zone expansion is identified as a special tax by the office of County Counsel. . . . the same special tax passed by the voters in the Helendale/Silver Lakes area at the time FP-5 was created . . . without a vote as required by California Constitution Article XIII C. . . . this previously limited Special Tax, approved only by residents of a very small area of the County of San Bernardino for a very limited purpose, will now be extended to all unincorporated areas and some incorporated areas of the County as well."

The complaint goes on to say that "all unincorporated parcels within 19,073 square miles will be taxed, and that October 16, 2018 at 10:00 am was the date of the statutorily required public hearing through which affected landowners could lodge a protest," with the stated rationale to "provide additional revenues in the amount of \$26.9 million with which to maintain current fire protection and emergency response services" but that "The Fire District does not explicitly state how the additional revenue to be obtained from taxpayers will be spent and has instead used vague aggregate indicators such as 'staffing expenses' and 'other operating expenses' to justify why new funding is needed," "but [the affected landowners] have not been given specifics as to where their money is going to be spent, why the budget continuously increases at such a high rate, or why the Fire District continues to engage in deficit spending. . . . [and] affected landowners have no way of discerning what the relevant facts are. Instead, [they] must defer to officials in uniform acting under color of authority telling the landowners only what the public officials believe those landowners need to know at various local presentations campaigning for the service zone expansion."

The lawsuit further alleges "the County of San Bernardino has no legal obligation to fund the Fire District but continues to do so and Fire Chief Mark Hartwig has also stated at various local presentations made as part of a campaign for the service zone expansion that, as of next year, the Fire District will run out of reserve funds, thus making the new revenues proposed by the expansion of FP-5 necessary due to the Fire District's increasing budget."

The complaint continues: "Even after receiving \$17,400,000 from the County's general fund for the 2018/2019 fiscal year. . . . the Fire District will still have a deficit for the fiscal year of over \$11,400,000 that will be required to be funded from the Fire District's reserves. Despite hours of community protest at the public hearing on October 16, 2018, the Board approved the expansion of FP-5 and imposed this new special tax . . . without a vote of the electorate. . . ." The lawsuit seeks relief from the Court because "No local government may impose, extend, or increase any special tax unless and until that tax is submitted to the electorate and approved by a two-thirds vote. . . . Hence, this new special tax . . . must be approved by two-thirds of the electorate to be valid."

"The Expansion Tax Resolution states in pertinent part that: 'the extension boundaries of Service Zone FP-5 will result in the levy an annual amount of \$157.26, with a maximum 3% annual cost of living increase, on each parcel . . . except those parcels which are statutorily exempt.' " . . . While Health and Safety Code section 13950 outlines the procedure that must be followed to raise additional revenues within a specific area and provide a public hearing at which affected landowners may protest, it does not set forth the protest procedures. The protest procedures are found in Government Code section 57025 et seq. . . . These statutory protest procedures . . . provide that if at least 25 percent of the number of owners of land who also own at least 25 percent of the assessed value of land within the affected territory

file a written protest, then the confirmation of a proposed expansion must be put to a vote of the electorate. Additionally, these statutory protest procedures set forth in Government Code section 57075 provide that if more than 50 percent of the landowners who own at least 50 percent of the total assessed value of land within the affected territory file written protests, then any proposed expansion must be withdrawn.”

The Complaint goes on to allege that . . . “not all affected landowners could obtain a protest form which needed to be submitted before the Fire District met to discuss this proposed resolution on October 16, 2018. . .the protest forms could only be obtained by going to the San Bernardino County Fire website and downloading a PDF file or by contacting ‘211’,” . . . “A paper copy of the protest forms was not mailed to affected landowners entitled to notice within the affected Service Zone boundary expansion areas. . . To obtain a form online, a landowner must have had a computer, internet access, the proper internet browser, the appropriate computer programs to view the protest form file, and a printer with paper to make a copy of the protest form. Not all affected landowners may have been able to meet these conditions.

“The second method, which is listed only as ‘Contact 211’ on the notice of hearing provided no further details as to what this means and actually referred to dialing the number 211 on a telephone. . . every affected landowner must have had a telephone. . . affected landowners, who had the right to file a protest form, might not have even been able to reach the appropriate ‘211’ service from their phone number if their phone number was attached to a non-San Bernardino County area code. An affected landowner needed to call the San Bernardino County ‘211’ service specifically. . . The affected landowner then had to ask for an FP-5 protest form, which then had to be mailed by the San Bernardino County ‘211’ service to the affected landowner before such landowners could fill it out and return it to the Fire District. With protest forms only being available 30 days before the hearing on this proposed levy, it is also unclear how early in the process an affected landowner would have needed to submit a request for a protest form from the ‘211’ service before it actually was received by the landowner, and whether it would then have been received in time by the Fire District before the hearing date. . . only then could a protest form be submitted. . . The procedure for obtaining protest forms was invalid in its execution and created disparate treatment between affected landowners, all of whom had the same right to protest this new proposed levy. . .[which]violates the Equal Protection Clause of the United States Constitution. . .

“All members of the electorate in an affected area are entitled to vote on a special tax in that area, regardless of whether they own property. It is contrary to these constitutional provisions to place restrictions not related to voter qualifications on the right to vote on this special tax. . . a violation of equal protection . . . the Fourteenth Amendment to the United States Constitution.”

Another basis for the lawsuit was that “CEQA [California Environmental Quality Act: Ed.] Guidelines section 15064(a) states that determining whether a project may have a significant effect plays a critical role in the CEQA process. . . Even though there appears to be substantial evidence before the Fire District that the expansion of FP-5 as a project may have a significant impact on the environment, there has been no attempt by Defendants to prepare an EIR [Environmental Impact Report: Ed.]. . . the relocation of a fire station or fire stations is currently being considered as a possibility under the expansion of FP5 as a project. The environmental impact of any fire station relocation has not been considered by Defendants before moving forward with the expansion of FP-5. . . Significant environmental changes under the CEQA guidelines can either be defined as a direct physical change or an indirect physical change.

“The possible relocation of a fire station satisfies the definition of a direct physical change . . . because it might include such side effects as dust, noise and traffic of heavy equipment that would result from the construction related to relocating a fire station. . . The possible relocation of a fire station satisfies the definition of an indirect physical change in the environment because it is a physical change in the environment which is not immediately related to the project, but which is caused indirectly by the project. The possible relocation of a fire station may lead to increased population growth in the newly relocated area, which could increase air pollution. . . The exemptions claimed by Defendants from the CEQA process do not apply here . . . In enacting CEQA, the Legislature declared it to be the policy of California to ‘take all action necessary to provide the people of this state with clean air and water.’ . . . The environmental review must be completed prior to approval of a permit, so that environmental damage can be minimized. . . [the Boards]’ failure to conduct any CEQA review before approving the expansion of service zone FP-5 constitutes a prejudicial abuse of discretion for failure to proceed in a manner required by law.”

The complaint concludes by summing up for the Court that its proponents seek “a preliminary injunction and a permanent injunction, enjoining defendants. . . and all persons acting under. . . them, from expanding service zone FP-5 and imposing a special tax without a two-thirds vote of the electorate as required by the California Constitution. . . a declaration that the special tax imposed by Defendants in Resolution 2018-99 and adopted by the Final Resolution violates the California Constitution and may not be enacted. . . a declaration that the restrictions allowing only landowners to vote on a special tax is invidious and a violation of equal protection under the law. . . a declaration that the protest procedures . . . [are] a violation of Plaintiffs’ right to equal protection under the law secured to them by the Fourteenth Amendment to the United States Constitution . . . a declaration that Defendants violated CEQA by approving the expansion of service zone FP-5 without complying with CEQA. . .a declaration that Defendants’ failure to prepare, consider, and approve or certify an adequate environmental analysis under CEQA was arbitrary and capricious and constituted a prejudicial abuse of discretion for failure to proceed in a manner required by law. . . costs of suit incurred in this action; and . . .such other and further relief as the court deems just and proper.” The latter, catchall phrase includes any requested relief that may come to light during the lawsuit and therefore wasn’t encompassed in the complaint. The lawsuit’s status since October is that the entities and individuals filing the lawsuit gave the Boards extra time in which to file their Answers, which were not yet filed, according to the Court’s website. The motion hearing, originally set for December 20, was continued and will be heard on January 16, 2019. MM will report what it learns.

What happens after the hearing? If the preliminary injunction is granted, further proceedings will be held on a permanent injunction. If the preliminary injunction is denied, instead, the parties may file a petition for writ of mandate, seeking an order that the Superior Court change its ruling. If that petition is denied, the parties may resort to the State Supreme Court, which may or may not decide to hear the case.

A trial[date]-setting conference is scheduled for April 10, 2019; cases are mostly required to be completed in one year, absent exceptional circumstances. MM will keep you posted.MM

LOCAL CIVIC ORGANIZATION MEETINGS:

MACA (Mentone Area Community Association) meets the second Tuesday of each month in Diamond Jim's Saloon (at the rear of the Mill Creek Cattle Company) 1874 Mentone Blvd., 6:30 p.m. Ample parking wraps around a neighboring home. MACA did not meet in December.

C.O.M.E.T./CHAMBER OF COMMERCE: Meetings: last Tuesday of the month, 7 p.m., at Rocky Point Fellowship in the back meeting room. The Chamber did not meet in November or December.

Mentone Senior Center, 1331 Opal Avenue (in the Library building): Senior Breakfast on Tuesday mornings. Call 909/794-0327 for more information.

OTHER LOCAL ORGANIZATIONS*: (Religious organizations meet on Sundays unless otherwise noted)

Rocky Point Fellowship
2116 Mentone Blvd.,
Mentone, 92359

Avodah Fellowship (Friday
nights):
Rocky Point Fellowship (in the
fellowship hall)
2116 Mentone Blvd., Mentone,
92359

Faith Chapel
1259 Agate Ave.,
Mentone, CA 909-863-8145

Seventh-Day Adventist Church of
Mentone (English and Spanish)
(Saturdays 8:30 and 11:00 a.m.)
1230 Olivine Ave., Mentone
Mentonechurch.org

Mentone Indonesian-American
Seventh-Day Adventist Church
(Saturdays)
1331 Turquoise Ave.,
Mentone, CA 909-799-3521

New Life Christian Women's
Luncheon @ Mill Creek Cattle Co.,
Mill Creek Cattle Co., 1st Thursday of
the month

AA/NA Rocky Point Fellowship,
2116 Mentone Blvd.,
Mentone, 92359, Tuesdays

Republican Committee Tea Party,
Mill Creek Cattle Company,
1874 Mentone Blvd., Mentone, First
Wednesday each month, 10-2

*Organizations that aren't listed here are welcome to contact mentonematters@aol.com to have their information included.

Interested in advertising with us? E-mail mentonematters@aol.com for reasonable rates and information.