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Reply to: Lakewood Ranch

MEMORANDUM

DATE: September 2, 2016
TO: Town Commission
FROM: Maggie D. Mooney-Portale, Town Attorney
SUBJECT: Request for Direction on Undergrounding Legal Memorandum Request

This Memorandum shall serve as a follow-up to my email dated August 10, 2016, that forwarded for your information a written request from Commissioner Zunz to prepare a legal memorandum on certain subjects relating to the neighborhood undergrounding project. A copy of Commissioner Zunz's August 8, 2016, communication is attached. In response to Commissioner Zunz's request, I advised that I would bring forward his request to the entire Town Commission for discussion and direction at a public meeting.

Florida lawyers are licensed and regulated by the Florida Bar. The Florida Bar has adopted the Florida Rules of Professional Conduct and requires that all Florida lawyers observe such rules of conduct. Pursuant to those rules, Florida lawyers are required to:

- abide by a client's decision concerning the objectives of representation,
- consult with the client as to the means by which they pursue such objectives,
- refrain from taking representation that is directly adverse to a client,
- remain loyal to a client, and
- refrain from advocating against a client's interests.

See, Rules 4-1.2, 4-1.7, 4-1.9, Florida Rules of Professional Conduct.

The Rules of Professional Conduct apply to local government lawyers, such that local government lawyers are similarly obligated from acting adversely to their government client's

interests and/or engaging in conflicting representation during the course of the governmental agency representation. See, Rule 4-1.11, Florida Rules of Professional Conduct.

I interpret Commissioner Zunz's request for a legal memorandum on the three (3) delineated topics as a request for the development of a legal memorandum that outlines arguments in opposition to the existing criteria utilized by the Town's consultants (Willdan Financial and Danny Brannon) and serve as the basis for the assessment methodology developed for the Town's neighborhood and/or GMD undergrounding projects. Based upon that interpretation, I am concerned that his objective in making a request for a legal memorandum on the three (3) delineated topics is potentially adverse to the Town Commission's interests and objectives of moving forward under the existing consultants' methodology. Given that over the 2-3 years the Town has invested considerable time and resources developing a legally defensible assessment program based upon the consultants' methodology for the undergrounding of overhead utilities throughout Longboat Key, I believe I am ethically obligated pursuant to the rules of Professional Conduct to bring Commissioner Zunz's request forward to inquire into whether a legal memorandum on his requested topics is desired by the Town Commission. Accordingly, I respectfully request direction from the Town Commission on the request I received from Commission Zunz.

Should you have any questions relative to this matter, please do not hesitate to contact me.

Attach (2): August 10, 2016, Email transmittal to Town Commission
August 8, 2016, Communication from E. Zunz

8/8/16

Request from E. Zunz.

WITH REGARD TO NON AD VALOREM TAXATION FOR THE UNDERGROUNDING OF UTILITY LINES IN THE NEIGHBORHOODS PLEASE PREPARE AN OBJECTIVE MEMORANDUM OF APPLICABLE FLORIDA LAW AS TO THE FOLLOWING:

1. THE POSSIBLE EFFECT THAT AN ELECTRICAL UTILITY POLE LOCATED ON AN ADJACENT PROPERTY MIGHT HAVE UPON THE ASSESSMENT OF A SUBJECT UNDERGROUNDED PARCEL IF THAT POLE WAS WITHIN 55 FEET OF THE LAND BOUNDARY (BUT NOT OF ANY BUILDING) OF THE SUBJECT PARCEL.

2. THE RIGHT TO INCLUDE IN THE ASSESSMENT OF ANY OR EVERY PARCEL WITHIN A TOWN A GOOD FAITH ESTIMATE OF AN AMOUNT TO REPRESENT A PROBABLE INCREASE IN ITS MARKET PRICE, RESULTING FROM A TOWN WIDE UTILITY UNDERGROUNDING PROJECT.

3. THE RIGHT TO INCLUDE IN THE ASSESSMENT OF ANY OR EVERY PARCEL WITHIN A TOWN A GOOD FAITH ESTIMATE OF AN AMOUNT TO REPRESENT A PROBABLE BENEFIT RESULTING FROM THE GENERAL ENHANCEMENT OF THE LOCALITY AS A WHOLE, RESULTING FROM A TOWN WIDE UNDERGROUNDING PROJECT.

AS APPEARS FROM PARAGRAPH 21K OF THE TOWN'S COMPLAINT AND PAGES 8-9 OF ITS MEMORANDUM OF LAW, ITEMS 2 AND 3 WERE BOTH PRESENTED TO THE COURT AS A BASIS FOR VALIDATING THE GMD PORTION OF OUR BONDING.

Maggie Mooney-Portale - Persson & Cohen

From: Maggie Mooney-Portale - Persson & Cohen
Sent: Wednesday, August 10, 2016 2:52 PM
To: ezunz@longboatkey.org
Cc: 'Jack Duncan' (jduncan@longboatkey.org); 'Terry Gans'; 'Phillip Younger' (pyounger@longboatkey.org); ipastor@longboatkey.org; jdaly@longboatkey.org; 'alinde@longboatkey.org'; Dave Bullock; 'Mike Hein'; Trish Granger (tgranger@longboatkey.org); Chris Roe (croe@bmolaw.com); ddraper@bmolaw.com
Subject: RE: underground
Attachments: SCAN8671_000.pdf

*****PLEASE DO NOT REPLY ALL*****

Commissioner Zunz,

This email shall confirm and acknowledge receipt of your attached request for a legal memorandum on matters relating to the undergrounding assessment methodology. As you know, at the July 5, 2016 meeting, the Town Commission directed the Town's consultants, staff and legal counsel to address 5 items relative to the assessment methodology for the neighborhood project and report back to the Commission on those items. I understand that those 5 items will be reported on at a September workshop and/or meeting. At the first available opportunity, I will bring your request for a legal memorandum up to the entire Town Commission for discussion, consideration and direction. If the Commission directs the preparation of a legal memorandum on topics relative to non-ad valorem assessments and/or the assessment methodology (beyond any that have already been prepared and are on record), then a memorandum will be prepared.

By way of copy, I cc'ing the entire Commission on this communication so they can be made aware of your attached request and my intention to bring this forward for discussion at a public meeting. In observance of the Sunshine law, I am requesting that no one reply all to this email. If there are any questions about this email, please feel free to contact me directly by phone.

Respectfully submitted,
-Maggie

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From: Ed Zunz [<mailto:EZunz@longboatkey.org>]

Sent: Tuesday, August 09, 2016 12:05 PM

To: Maggie Mooney-Portale - Persson & Cohen

Cc: Town Clerk

Subject: underground

At our July meeting the Commission decided to again reconsider assessments for undergrounding the neighborhoods. In order to do so it is essential that the Commission and the public have a clear understanding of both the extent and the limits that Florida law places upon us in making such determinations. For this reason I submitted to you yesterday for discussion a written list of three legal issues as to which I think we need written legal clarification both as to Florida law and as to consistency in dealing with our two interrelated projects. As Town Attorney, would you kindly prepare for us an objective written analysis of Florida law applicable to each of these three issues. Thank you. Ed Zunz, Commissioner



End of Agenda Item