

**LAW OFFICES OF
JOHN D. O'NEILL
ATTORNEY AT LAW AND COUNSELOR**

**TELEPHONE
561-366-1212**

October 27, 2017

**FACSIMILE
561-366-1236**

Town Clerk
Town of Palm Beach
360 S. County Road
Palm Beach, FL 33480

VIA FACSIMILE AND EMAIL

**RE: Town of Palm Beach Underground Utilities Project
Notice of Appeal of Complaint to Reduce Special Assessment levied per Resolution No. 100-2017**

Dear Town Clerk:

This firm represents the following property owners who own the corresponding real property in the Town of Palm Beach as set forth below:

1. Maurice J. Herman - 5 Sloan's Curve Dr. (PCN: 50-43-44-11-07-000-0050)
2. Camilo Rafal - 11 Sloan's Curve Dr. (PCN: 50-43-44-11-07-000-0110)
3. Carolyn Sakolsky - 16 Sloan's Curve Dr. (PCN: 50-43-44-11-07-008-0010)
4. Tracy Markin - 17 Sloan's Curve Dr. (PCN: 50-43-44-11-07-008-0080)
5. Dan Marantz - 19 Sloan's Curve Dr. (PCN: 50-43-44-11-07-008-0070)
6. Robert Postal - 20 Sloan's Curve Dr. (PCN: 50-43-44-11-07-008-0060)
7. William Matheson - 22 Sloan's Curve Dr. (PCN: 50-43-44-11-07-008-0040)
8. Barbara C. Sidell - 23 Sloan's Curve Dr. (PCN: 50-43-44-11-07-008-0050)

Under date of August 1, 2017, the undersigned filed a written complaint to reduce the special assessments levied against the above property owners, a copy of which is attached and incorporated as if fully set forth herein.

Section 90-49(c), Town of Palm Beach Code of Ordinances, states in relevant part:

All requests from affected property owners for any such changes, modifications or corrections shall be referred to, and processed by, the **town manager** ... In the event the **town manager** ... fails to correct any alleged error applying the assessment apportionment method to any particular property, which correction would have reduced the assessment relating to that property, the petitioner may ... file in writing with the town clerk a notice of appeal...." [Emphasis added].

To date, the undersigned has received no written decision from the Town of Palm Beach Town Manager, Thomas Bradford, as required in Section 90-49(c), Town of Palm Beach Code of Ordinances. The special assessment to be assessed for each of the above properties has already been sent by the Town for payment without any notice to the undersigned from the Town Manager of any change, modification or correction of the erroneous assessments.

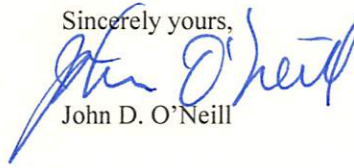
Rather, a town employee, Steven N. Stern, who is not the Town Manager, mailed to the undersigned a letter claiming that the August, 1, 2017 letter complaint was denied, a copy of said letter is attached.

Since Mr. Stern is not the Town Manager his letter does not trigger the appeals process under Section 90-49(c); however in an abundance of caution my clients again seek the Town Manager's response and further submit this notice of appeal of the Town's failure to correct the Town's error in applying the assessment apportionment method to the above properties. The reasons for the appeal are set forth in the enclosed August 1, 2017 letter.

In light of the foregoing, All rights are hereby reserved to supplement these arguments verbally or in writing or in any subsequent administrative or court proceeding, should the need arise.

Should you have any question, please do not hesitate to call upon me.

Sincerely yours,



John D. O'Neill

JDO/tj
Enclosures

cc: Clients
Members of the Town Council (Via US Mail)
Thomas Bradford, Town Manager (via US Mail)

LAW OFFICES OF
JOHN D. O'NEILL
ATTORNEY AT LAW AND COUNSELOR

TELEPHONE
561-366-1212

August 1, 2017

FACSIMILE
561-366-1236

Members of the Town Council
Town of Palm Beach
360 S. County Road
Palm Beach, FL 33480

**RE: Town of Palm Beach Equalization Board
Complaint to Reduce Special Assessment levied per Resolution No. 100-2017**

Dear Members of the Town Council:

This firm represents the following property owners who own the corresponding real property in the Town of Palm Beach as set forth below:

1. Maurice J. Herman - 5 Sloan's Curve Dr. (PCN: 50-43-44-11-07-000-0050)
2. Camilo Raful - 11 Sloan's Curve Dr. (PCN: 50-43-44-11-07-000-0110)
3. Carolyn Sakolsky - 16 Sloan's Curve Dr. (PCN: 50-43-44-11-07-008-0010)
4. Tracy Markin - 17 Sloan's Curve Dr. (PCN: 50-43-44-11-07-008-0080)
5. Dan Marantz - 19 Sloan's Curve Dr. (PCN: 50-43-44-11-07-008-0070)
6. Robert Postal - 20 Sloan's Curve Dr. (PCN: 50-43-44-11-07-008-0060)
7. William Matheson - 22 Sloan's Curve Dr. (PCN: 50-43-44-11-07-008-0040)
8. Barbara C. Sidell - 23 Sloan's Curve Dr. (PCN: 50-43-44-11-07-008-0050)

The above-reference properties are all part of the homeowner's association known as "The Residences at Sloan's Curve."

Pursuant to the Town Council's approval of the Initial Assessment Resolution No. 90-2017, the Town held a meeting on July 12, 2017 to authorize the imposition of non-ad valorem special assessments against Town of Palm Beach properties for an annual special assessment for the design, acquisition, construction and installation of the Underground Utility Improvement Area for the fiscal year of October 1, 2017 to September 30, 2018 and future years.

In order to allocate the special assessment to the properties in the Town of Palm Beach, the Town adopted a cost assessment methodology prepared by Raftelis Financial Consultants, Inc. The Raftelis Report was initially prepared on June 2, 2017 and subsequently amended on June 12, 2017. The Raftelis Report assigned equivalent benefit units ("EBUs") to three categories: safety, reliability and aesthetics. EBUs were then allocated based on the property size, occupant density, location to existing facilities, etc.

On July 12, 2017, the Town Council of the Town of Palm Beach approved Resolution No. 100-2017 which levied a special assessment against Assessed Parcels in the Town of Palm Beach. The July 12, 2017 vote by the Town Council was a final vote.

Property owners have twenty (20) days from July 12, 2017, the date Resolution No. 100-2017 was decided, to submit any and all complaints as to the special assessment. Pursuant to Section 170.08, Florida Statutes, the Town Council shall meet as an equalizing board to hear and consider any and all complaints as to the special assessments and shall adjust and equalize the assessments on a basis of justice and right.

In this regard, the undersigned counsel hereby petitions and complains as to the special assessments for the above-referenced property and states that the special assessment should be reduced below the minimum EBUs for the following reasons:

The above properties at The Residences of Sloan's Curve have their utilities undergrounded. The Termination Points, as defined in Resolution 90-2017, were completed prior to the Town's program for Excluded Neighborhoods, as the developer was ahead of its time when it undergrounded the distribution lines and lateral lines many years ago. This undergrounding project was completed for The Residences of Sloan's Curve properties in much the same way as the Excluded Neighborhoods conducted their Underground Utility Improvements. Similarly to the Excluded Neighborhoods, the above properties are being serviced by metal transformer boxes connected by underground conduits along the neighborhood's electrical grid. Therefore, there is no additional costs to the Town-Wide Undergrounding Project for equipment purchase and installation, trenching and burial of the conduit, traffic management costs, pole removal, and all of the design, engineering and project management that are related to these services.

It is important to distinguish the above property at The Residences of Sloan's Curve from other individual properties that have only buried the lateral utility lines. In fact, a quick review of the properties makes it clear that there are no utility poles or wires anywhere around each of these properties located on the east side of South Ocean Blvd. Instead, the only poles or wires visible are on the west side of South Ocean Blvd.

Based on the extent of underground services currently in place, there are less services and consequently less costs associated with the design, acquisition, construction and installation of the Underground Utility Improvement Area. As a result, the safety, reliability and aesthetics EBUs for each of the above properties must take into consideration these circumstances in reducing the EBUs. There is certainly a very good case, based on these circumstances to even request that the safety, reliability and aesthetic EBUs be reduced below the minimum amounts as these properties appear to fall somewhere between Excluded Neighborhoods and the minimum threshold to be considered Assessed Parcels for purposes of the Project.

As if the discussion above is not compelling enough, a reduction of the EBUs should occur because at the time the property owners initially purchased their respective property from the developer, they paid a premium to the developer of The Residences at Sloan's Curve to install underground utility services for their respective residences and appurtenances. Consequently, they have already paid once for the undergrounding of their utility services, therefore, justice and equity dictates that the above-property owners should receive a reduction of their special assessment as consideration for the prior expenses paid to underground their utility services.

The Raftelis Report uses a "minimum of x EBU" for various assessment subcategories however, nowhere in the Raftelis Report is there any evidence or benefit analysis for the implementation of "minimum" assessments for safety, reliability and aesthetics of the Town-Wide Underground Utilities Project. Moreover, the Raftelis Report is devoid of any underlying rationale supporting a minimum floor for any of these properties' EBUs. Therefore, if there is no supporting rationale, evidence or benefit analysis in the methodology report, the special assessments for these properties based on minimum EBUs are in the nature of an illegal ad valorem tax because there is no corresponding special benefit that exceeds the minimum assessment amounts. *See Indian Creek Country Club, Inc. v. Indian Creek Village*, 211 So.3d 230, 234 (Fla. 3rd DCA 2017). Furthermore, if there is no basis for supporting a minimum level, then each of the properties herein assessed at that level are being assessed at an arbitrary and capricious amount with no logical connection to the special benefit, if any, that these properties receive from the Town-Wide Underground Utilities Project.

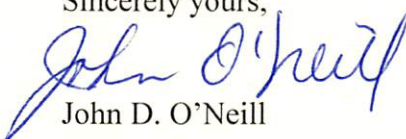
And finally, it is important to note that in the Executive Summary of the Raftelis Report, the Town consultants considered the exact issues raised by the above property owners when it identified the only exception upon which its calculations may be reduced:

Prior to debt financing, property owners whom have undergrounding portions of overhead facilities adjacent to their property may request an adjustment to their equivalent benefit allocation to reflect the appropriate proportionate benefit received by the assessment program.

In light of the foregoing, there are very compelling reasons, based both on the current underground electrical grid in place for the above properties and also on the fairness and justice for an already paid special assessment, for the Equalization Board to reduce the EBUs to a level below the minimum threshold that reflects the properties' actual EBU. My clients additionally incorporate herein the testimony and written materials provided to the Town Council at the July 12, 2017 hearing. Samples of some of the incorporated written materials are attached. All rights are hereby reserved to supplement these arguments verbally or in writing or in any subsequent administrative or court proceeding, should the need arise.

Should you have any question, please do not hesitate to call upon me.

Sincerely yours,


John D. O'Neill

JDO/tj
Enclosures
cc: Clients

Date: July 11, 2017

Via Hand-Delivery to:

Town Council
Town of Palm Beach
360 South County Road
Palm Beach, FL 33480.



Re: Town of Palm Beach (the "Town") proposed Non-Ad Valorem Special Assessments for the design, acquisition, construction, and installation of the Underground Utility Improvements for the fiscal year October 1, 2017 – September 30, 2018 and future fiscal years and Resolutions Nos. 090-2017 and 100-2017 (collectively, the "Special Assessment").

Public Hearing Date: July 12, 2017
Date of Notice of Hearing: June 21, 2017

KOSBERG'S OBJECTION TO SPECIAL ASSESSMENT

Carol Kosberg and Carol Kosberg, Trustee U/T/D 2-23-90 (collectively, "**Kosberg**"), through undersigned counsel, object to the Special Assessment on the following grounds:

1. Kosberg is the owner of the property located at 3400 South Ocean Boulevard, Apartment 2H2, Palm Beach, Florida, 33480, more particularly described as Condominium Apartment Number II-H-2 in the ATRIUMS OF PALM BEACH CONDOMINIUM APARTMENTS, a Condominium according to the Declaration of Condominium thereof, OR Book 3012, Page 994, of the Public Records of Palm Beach County, FL, as amended ("**Kosberg's Property**").

2. The Special Assessment is invalid as to Kosberg's Property and all other property within the Town subject to the Special Assessment (Kosberg's Property and all other property within the Town subject to the Special Assessment being collectively referred to as the "**Assessed Property**") for the reasons set forth herein and for all of the reasons stated in the materials contained in the Appendix to this Objection, incorporated herein by reference, which the Town

Council has failed to consider, thereby making the Special Assessment arbitrary. Kosberg also adopts and incorporates by reference all objections to the Special Assessment filed or otherwise submitted by any other property owner.

3. The Special Assessment does not satisfy the two-prong test and other standards set forth in *Morris v. City of Cape Coral*, 163 So.3d 1174 (Fla. 2015) and similar cases that require that (1) the property burdened by the assessment must derive a special benefit from the service provided by the assessment, and (2) the assessment for the services must be properly apportioned.

4. There does not exist a logical relationship between the Undergrounding Project which is the subject of the Special Assessment and the benefit to the Assessed Property.

5. The undergrounding of above-ground utility lines is a general sovereign function and by law does not provide a special benefit for the Assessed Property.

6. The Town Council's legislative determinations are unsupported by the record and are arbitrary.

7. The Town Council's legislative determinations are not supported by competent substantial evidence.

8. The Special Assessment is not directly proportionate to the benefits to the Assessed Property. The Town has not demonstrated that the amounts of the assessments are proportional to, and no greater than, the benefits conferred on the Assessed Property. This is particularly true given that such properties are required to pay for special benefits conferred upon certain parcels and neighborhoods that, under the Town's methodology, will be benefitted by the Undergrounding Project, but which were nevertheless excluded from or favorably treated by the assessment.

9. The Special Assessment is in excess of the proportional benefits to the Assessed Property.

10. The Town Council has not quantified the benefit to the Assessed Property and therefore there is no basis for determining that the amount of the assessments are not greater than the benefit to the Assessed Property.

11. The Town is on a barrier island subject to storm surge, with portions below sea level and in a flood zone, including the Assessed Property, making the underground lines, above-ground switch boxes and underground vaults on the Assessed Property more vulnerable to damage and to disruption in service than hardened utility poles and above-ground lines, particularly hardened poles and lines. As a result, there is no safety or reliability benefit to undergrounding.

12. The FPL Reliability Reports relied upon by the Town Council do not address undergrounding on a barrier island, with portions below sea level and in a flood zone, and therefore cannot be the basis to justify the determination that there are benefits for safety and reliability resulting from undergrounding. FPL's comments favorable to undergrounding are in general and are inapplicable to the Town because of these factors.

13. There is no safety or reliability benefit to undergrounding the Assessed Property.

14. Undergrounding will require that owners on whose property switch boxes and underground vaults will have to be installed must give easements to service these. The Town Council did not consider the negative effects of the easements and the decrease in property value to the Assessed Property resulting from the installation of the switch boxes and vaults and the granting of the easements.

15. The assignment of safety equipment benefit units ("EBUs") should be based on average density. Instead, the Town Council is assigning safety EBUs based on property frontage, which works against condominium unit owners, including the Assessed Property. The Town Council has assigned reliability EBUs based on density and should do the same as to safety EBUs.

16. The assignment of EBUs to the golf courses and the Breakers is arbitrary and inconsistent with the assignment of EBUs to other properties. This assignment was based on the false assumption that “parcels that make up the golf courses and the Breakers benefit to a lesser degree due to diminished return of benefit as the parcel’s total acreage increases.” In fact, overhead facilities are primarily visible when people are outside. When on a residential property, a large percentage of time is also spent indoors. When on a golf course, a large percentage of time is also spent outdoors. If time spent looking at overhead facilities is related to aesthetic benefit, golf courses and the Breakers have a per-acre benefit that is greater than residential properties.

17. The method of assignment of EBUs to “excluded parcels” is arbitrary and inconsistent with the assignment of EBUs to other parcels. The “excluded parcels” should be assigned EBUs in the same manner as the other parcels which are subject to the assessment.

18. The method of assignment of EBUs to “excluded neighborhoods” is arbitrary and inconsistent with the assignment of EBUs to other parcels. The “excluded neighborhoods” should be assigned EBU’s in the same manner as the other parcels which are subject to the assessment.

19. In addition or alternatively, the “excluded neighborhoods” should be assigned a safety and/or aesthetic EBUs. The safety EBU includes increased access. The “excluded neighborhoods” will have increased access as a result of surrounding parcels and other parts of the Town having increased access, if any, resulting from the undergrounding. The “excluded parcels” will also benefit from the aesthetic benefit, if any, to surrounding parcels and other parts of the Town resulting for the undergrounding.

20. The assignment of aesthetic EBUs is not objective or quantifiable and there is no basis to determine that the aesthetic benefit of undergrounding will increase property values.

21. The undergrounding will be installed in phases, yet the assessment will be imposed on all Assessed Property at the same time. It is arbitrary to levy an assessment on a parcel that will not receive a benefit immediately or within a reasonable time, such as the same tax year.

22. Kosberg and all other owners of Assessed Property will be denied due process of law. Kosberg's property will not receive any actual, physical, material and quantifiable special benefit from undergrounding. Therefore, the Special Assessment is an improper effort to take Kosberg's Property and other owners of Assessed Property without due process of law. *See Carson v. City of Fort Lauderdale*, 155 So. 2d 620 (Fla. 2d DCA 1963).

23. FPL is mandated by the State of Florida to harden utility poles by replacing wood utility poles with those made of concrete or steel that can withstand winds of 145 mph. Significantly, FPL's replacement of electric poles is at no cost to the Town. FPL's hardening program is expected to render the electric poles safe. There is, thus, no "safety" benefit from undergrounding.

24. The Raftelis Report is fatally flawed in that it assumes – without supporting evidence or analysis – that undergrounding of utilities will benefit each parcel with the Assessed Property and contains no analysis (other than through arbitrary assignment of EBU values based on improved safety, improved reliability and improved aesthetics) to show how the Assessed Property will actually receive a "special benefit" from the proposed undergrounding (*i.e.*, that any increase in value of the properties being assessed resulting from the proposed construction will be greater than the assessments to be levied against such properties).

25. Even if a benefit is conferred upon particular parcels of property, if the benefit is the same or similar to that which is conferred upon the community at large, the individual homeowner may not be assessed for a *pro rata* cost of the improvement, and a special benefit may

never be inferred on the theory that all similarly-situated parcels were benefited in the ratio that such parcels relate to the total value of all improved parcels. *Hanna v. City of Palm Bay*, 579 So. 2d 320, 322 (Fla. 5th DCA 1991).

CONCLUSION

26. Based on the foregoing and the materials contained in the Appendix, the Special Assessment is invalid.

WEISS, HANDLER & CORNWELL, P.A.
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**Board Certified Real Estate
***Board Certified Business Litigation

July 11, 2017

TOWN OF PALM BEACH
JUL 11 2017
Town Manager's Office

TOWN OF PALM BEACH
JUL 11 2017
Town Manager's Office

Via Hand Delivery

Palm Beach Town Council
c/o Town Manager
360 South County Road
Palm Beach, FL 33480

Re: Written Objections to Proposed Resolution Number 090-2017¹

Ladies and Gentlemen:

This office represents Robert Davidow, a Palm Beach resident and taxpayer, whose homestead is located at 2100 S. Ocean Boulevard, #401N, Palm Beach, Florida 33480. The purpose of this letter is to advise you of our client's objection to the passage of the above-referenced resolution ("the Resolution"), for the reasons stated below. These written objections are provided within the twenty (20) day time restriction contained in the notice of the meeting to consider the Resolution, scheduled for tomorrow evening at 5:01 pm.

Generally speaking, the Resolution proposes the imposition of a non-ad valorem special assessment on Palm Beach taxpayers to pay for the "undergrounding" of overhead utility lines throughout the Town, a project expected to take up to ten years to complete, at a cost of at least \$120 million, although this number can be expected to increase over the life of this major undertaking. As the Council is no doubt aware, most municipal functions are expected to be paid through the collection of ad valorem taxes; however, special assessments may be levied in circumstances where it can be established that: (1) the property assessed will derive a "special benefit" from the service provided; and (2) the assessment is fairly and reasonably apportioned according to the benefits received.²

¹ Different documents have referenced this as Resolution Number 100-2017. The language appears to be identical, and the latest version of the Town Council Agenda references this resolution number.

² *Indian Creek Country Club, Inc. v. Indian Creek Village*, 211 So.3d 230, 234 (Fla. 3rd DCA 2017) (citations omitted).

A PARTNERSHIP OF PROFESSIONAL ASSOCIATIONS

These objections challenge the existence of *any* benefit from the proposed project, and thus, it is asserted that the imposition of the proposed special assessment would be contrary to well-established law on the subject.

The Resolution, beginning with Section 1.03(E), proposes findings which suggest the following perceived "special benefits" should the proposed underground utility improvements be put in place. The argument against the perceived benefit will be presented concurrently.

1. Enhanced property safety by reducing occurrences of downed poles, fires, and related incidents.

As explained in the attached narrative of J. Bradley Shepherd, P.E., the contents of which are incorporated herein in their entirety, any perceived "safety" advantages are more illusory than real. There is no data to suggest that the overhead lines that have been in place in Palm Beach for decades present any perceptible hazard to the public in their current state, making any perception of enhanced safety through their removal more theoretical than real. Moreover, buried utility lines present their own theoretical hazards, through digging, unauthorized entry into pad-mounted ground level equipment, or vehicular contact with said equipment, for example. Ultimately, both types of installation depend upon the implementation of utility based safeguards, combined with common sense, to avoid most anticipated potential hazards. The notion that burying cables eliminates hazards is simply incorrect and misleading, as is the suggestion that underground utilities are *ipso facto* more "safe" than overhead utilities.

2. Reliability of service will be enhanced by burying utility cables, by reducing the frequency of utility outages, and through the installation of new, upgraded utility infrastructure.

The point needs to be made that, as reflected in the 2015 FP&L Distribution Reliability Report, despite the challenges provided statewide relative to the delivery of electrical service to FP&L's 4.9 million customers, failures and interruptions are rare. For all of 2015, there were only slightly in excess of 100,000 outages

for the year, throughout the entire customer base, with each outage lasting just under one hour, on average, with each customer having suffered one outage a year, on average. Moreover, a March 23, 2017 news release (attached) reveals that FP&L had its "best-ever service reliability" year in 2016. Improvements cited as contributing to this success included "hardening" of power lines, clearing of vegetation, and the widespread use of smart meters and other intelligent devices. Undergrounding was not cited in the news release. So while the numbers referenced in Section 1.03(F) of the Resolution are of interest, they suggest that, by spending (at least) \$120,000,000.00 over ten years, and putting residents and visitors through ten years of significant disruption in terms of construction, traffic, and related inconveniences, the average property owner in Palm Beach can expect to experience about an hour or so less of lost electrical service per year than is currently the case. That averages out to just 5 minutes per month of "benefit" to the average user. To suggest this as a benefit commensurate with the anticipated expense is nonsensical. Moreover, as Engineer Shepherd references in his report, while the frequency of outages with an underground system might be expected to decrease as compared to an above ground system, the duration of outages, due to the relative difficulty in locating, and then repairing, the trouble spot, is just as likely to increase with the underground system. In all, any perceived advantage in terms of reliability is minimal at best, and certainly not anything which might justify the expense and inconveniences referenced above.

3. Improved aesthetics through burying cables and removing power poles.

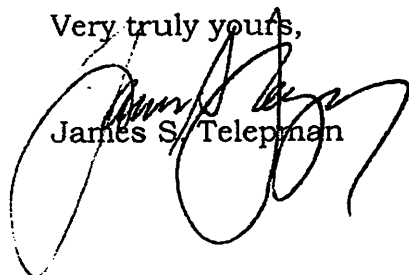
As suggested in Engineer Shepherd's narrative, beauty is certainly in the eyes of the beholder, and for every person who walks down the street staring at power poles and believing them to be unsightly eyesores, there are just as many, if not more, who do not even notice their existence, whether because they have been a part of the landscape for everyone's lifetime, or because they are shielded from view in some form or fashion. Moreover, there are likely to be just as many people bothered by the scattered ground-level

electrical equipment that is part of the proposed project as are bothered by the current overhead configuration. The point is, aesthetics is subjective, and there is no objective data which suggests that one system is more or less "attractive" than the next, particularly when taking into account the cost and inconvenience that this proposed project anticipates. Also, when repairs on an underground system are required (and certainly no one is suggesting that an underground system will not require maintenance), the equipment required and resultant traffic delays, not to mention whatever property disturbance will be necessitated, will hardly contribute to the aesthetics of the area in question while the maintenance is ongoing. Finally, the undersigned is not aware of any data to suggest that the burying of utility cables will have a significant impact on the value of the real estate affected thereby; certainly, while work is ongoing in the vicinity of a given property, common sense suggests that the effect on value will be adverse.

In conclusion, this is not a project which proposes to deliver utility service to the taxpayers of the Town of Palm Beach; rather, this is a proposal to change only the manner of delivery of utilities to those taxpayers, which in no way enhances the value or reliability of the service itself. There is no measurable safety enhancement. There is no measurable reliability enhancement. There is no measurable aesthetics enhancement. There is no measurable value enhancement. And for all of this, the Town proposes to specially assess its taxpayers above and beyond their already substantial ad valorem burdens, to the tune of (at least) \$120,000,000.00, for a project that will take approximately 10 years to complete. The burden of this project is in no way commensurate with any perceived benefit to be provided by same, in the long run. It is requested that the Council reject the Resolution.

It is understood that other residents will be lodging opposition to the Resolution, both verbally and in writing. Their arguments are adopted and incorporated herein. Moreover, our client reserves the right to supplement these objections at the July 12 hearing and in any subsequent court proceeding, should the need arise.

Very truly yours,



James S. Telepman

In the Matter of
Resolution No. 090-2017/100-2017
Town of Palm Beach, Florida

Public Hearing July 12, 2017

Introduction:

Mr. Shepherd is an Electrical Engineering graduate of the University of Florida with a Masters degree in Business Administration from the Crummer School of Business of Rollins College, Winter Park, Florida.

He has been continuously employed in the electrical industry since 1955, including thirty years in the employment of a Florida investor owned electrical utility, retiring from Florida Power Corporation in 1994. After retirement he formed J. B. Shepherd & Co., and currently serves as its Chairman.

Mr. Shepherd has worked on committees of the Edison Electric Institute, The Institute of Electrical and Electronics Engineers, the Southeastern Electric Exchange and directly with cable and equipment manufacturers in the evolution of the underground electrical utility system including participation in the design of high voltage cables, and pad mounted transformers and switches.

Mr. Shepherd has authored reports on the costs differences of overhead and underground electrical distribution and has testified before the Florida Public Service Commission on the life cycle values, considering application of the present value of future maintenance costs to the first cost of construction of both overhead and underground installations.

J. B. Shepherd & Company, Inc. is an Electrical and Forensic Engineering firm offering full coverage of the electrical consulting spectrum providing expert opinions and strategic advice in support of litigation and legislation involving technical issues; primary focus is on accident investigation, electrical safety, electrocution, injury and/or property damage. Overhead and underground electric utility power lines are an area of specialty.

Testimony:

If time was not an issue, Mr. Shepherd would focus the Town Council's attention on Section 1.03 (E) of the Resolution, which summarizes the benefits expected to be realized in the areas of (1) Safety, (2) Reliability and (3) Aesthetics.

Following are Mr. Shepherd's opinions and their basis:

Safety:

- (1) There will be no difference in the **safety** of the Florida Power & Light distribution facilities after completion of the placement of the current overhead lines and appurtenances into a comparable underground and above ground arrangement.

Basis:

The safety of all electrical utility installations is governed by the National Electrical Safety Code, which has been adopted as legislative law by the Florida Public Service Commission and is ordered and regulated as directed in the rules and regulations section of the approved Tariff of all Florida electrical utilities, including Florida Power & Light Co. (FPL).

The natural dangers associated with overhead and underground facilities are different and the different safety measures employed to protect the public are appropriately applied. Overhead lines are bare wires insulated by separation (height) and barrier; underground lines are insulated cables further protected by their depth of bury. Overhead transformers and switches are mounted on poles out of public reach. Underground system transformers and switches are mounted on above ground pads in metal containers secured by padlocking devices.

Accidents on the overhead system most commonly occur when someone approaches too close or inserts a conductive device into

the energized wires. Fruit picking, tree trimming and elevated construction are some common activities that can result in injury if the published codes such as the U. S. Occupational Safety and Health Administration (OSHA) and the advertised admonitions of FPL are not followed.

Accidents on the underground system most commonly occur when someone digs into the buried cable or breaks into the pad-mounted equipment. Construction excavation and attempted theft of copper wire or pirating of electricity are some common activities that can result in injury if the published codes and the advertised admonitions of FPL are not followed.

Overhead wires can be exposed to public contact when poles are blown over in a weather event or knocked down by errant vehicles. Underground system conductors can be exposed to public contact by vehicles knocking over pad-mounted devices or raging waters forcing them off their pads. In both cases, the National Electrical Safety Code requires that wires exposed to earth (and public) contact be de-energized by automatic means immediately. Although fallen wires should certainly be avoided, they are not as dangerous as they once were because of these codes and improved technology.

Therefore, although the hazards are different, there will be no difference in the accident statistics (safety) as long as the well-known and advertised precautions and common sense is followed.

Reliability:

- (2) There will be no definable difference in **reliability** of the Florida Power & Light distribution facilities after completion of the placement of the current overhead lines and appurtenances into a comparable underground surface arrangement.

Basis:

The statistics referenced in the Resolution are based on historical data that is not a reliable predictor of future performance. Many of the quoted statistics are from the FPL Preparedness Report and are unique to storm conditions.

The Resolution calls for the conversion of the present FPL overhead distribution facilities to underground. In fact, that will not be the case. FPL will put the overhead wires underground but the overhead switches and transformers will be placed on the ground, not under the ground.

There are no historical statistics that mirror the system that will exist in Palm Beach after completion of the work ordered by the Resolution.

Palm Beach is different from the rest of the FPL customer base. Once the conversion from overhead to underground (and on-the-ground) is complete it will be further unique to the rest of the state.

Reliability is commonly measured by either the number of times power has been out or the length of time power has been out, or both.

With an overhead system, the number of outages would be expected to be greater because of the greater exposure to damage that overhead poles and wires are subjected to. Similarly, the length of an outage on the underground system would be expected to be greater because of the difficulty and time required to locate and repair an underground cable.

In actuality, the systems are not comparable. Overhead systems are radial where underground systems are circular, or looped. When an overhead line fails, every customer beyond the point of failure is out until repairs can be made. A typical repair on an overhead system consists of a bare wire splice that can be made in a matter of minutes. Repair of a failed underground cable typically takes hours or days to locate the point of failure, excavate and splice it back together with an insulated underground splice. Even though the underground

served customers can be switched back on, the time required to restore the underground system to its normal state of usefulness exceeds the statistical outage duration. Therefore statistics based solely on outage times or duration are misleading.

Exposure to the elements and vehicular damage is not limited to the poles that support the overhead. Every device currently located on a pole, must be re-located to the ground when the poles are eliminated. In the relatively congested area of Palm Beach, this means that either a pad-mounted transformer or a pad-mounted switch may be placed on the ground within the right-of-way as often as the current poles are spaced, or about every 100-200 feet. Poles that can be struck by vehicles are eliminated but the number of pad-mounted devices that can be struck by vehicles is increased significantly. There are no historical statistics that can accurately predict the performance of this proposed unique Palm Beach on-the-ground system.

The best predictor of reliability between overhead and underground remains the common sense analysis: overhead goes out more often but is restored quickly while underground outages are infrequent but take longer to repair.

There is no doubt that the comparable reliability is different, but whether or not there is an improvement in reliability after an overhead to underground conversion is a matter of definition.

Aesthetics:

- (3) Plato said, "Beauty is in the Eye of the Beholder". It is as true now as it was in ancient Greece. After completion of the undergrounding project, some will say the beauty of Palm Beach has been enhanced, most will not notice. No improvement in **aesthetics** is assured,

Basis:

Palm Beach is uniquely beautiful among South Florida municipalities. The palm lined avenues, hedges and attractive buildings set it apart as no other improvements could.

The existing overhead power poles were placed by FPL to be as inconspicuous as possible. They do not "stand out" as an eyesore that materially detracts from the glorious approaches into the City. The beautiful palm trees dim the eye of most beholders such that the poles are not noticed at all.

The so-called "Undergrounding" project is actually, as stated previously, an "Under and On the Ground" project. Only the wires will be placed underground. All of the associated electrical equipment will be placed in plain view on the surface above ground. The equipment that is currently out of sight 30 to 50 feet high will have to be lowered to the ground when the poles are removed. Although most of the poles are required to support the wires, many poles are placed by FPL specifically to raise the equipment above the street. That equipment will additionally have to be placed at street level and made accessible.

The town center appears to be pole-free today. It appears to be so because much of the FPL overhead is in the rear of the buildings or concealed by vegetation.

The most expensive part of the proposed overhead to underground conversion will be those inconspicuous rear lot facilities. FPL will not install rear lot underground because of required accessibility to pad mounted transformers and switches. Poles can be climbed but maintenance of surface mounted equipment requires truck access. Where poles and wires are now located behind a natural screen, the new pad mounted devices will all be located on the street. In many areas, the street is too narrow to accommodate additional street level equipment so removal or sever modifications will have to be made to walls and hedges.

Along the avenues, the pole mounted transformers and switches are high above the treetops and essentially invisible to the casual observer. After conversion, all this pole-mounted equipment will be located at eye level on the street. Safe approach for FPL employees to operate the switches and transformers requires a clear zone around them of up to ten feet; therefore their placement will require more space than just the footprint of the equipment. A casual observer looking out a car window today sees only the trunks of the palm trees interspersed with an occasional "trunk" of a power pole. After the undergrounding project the same observer will see multiple eye level boxes posted with large high voltage warnings distracting from the view of shops and businesses.

Pole mounted equipment can be maintained by FPL from high reaching "bucket" trucks. Surface level switches, splice boxes and transformers require large work trucks and a crane or derrick truck whenever the pad-mounted equipment must be replaced.

The impact on aesthetics of the "undergrounding" project includes not only the removal of the poles and wires, nor just the appearance of the new street level above ground equipment, but must include both the visual and the practical impact of the installation and maintenance of the pad mounted equipment. The installation process of the conversion will require disruption of traffic and the distraction of multiple street-side trucks and heavy equipment. The installation is predicted to takes as long as ten years; the additional disruption due to maintenance is ongoing forever.

The improvement of beautiful Palm Beach, if any, will remain truly in the eye of the beholder. Some will appreciate the removal of the poles. Many will see the additional pieces of new equipment along the streets and in or along the sidewalks as having a negative impact on aesthetics.

Conclusions:

- 1. Safety: No predictable net gain**

- 2. Reliability: No definable net gain**
- 3. Aesthetics: Negative impact**

Recommendations

- 1. Revise the resolution or create a new one to be a utility beautification project, working with FPL to address the areas of most positive impact. FPL has experience in this area as they have worked with other municipalities and communities in a similar manner.**
- 2. Declare and resolve that the Town of Palm Beach is an underground only area for future expansion and normal replacement of overhead facilities at end-of-life. Within the ten years set aside for wholesale conversion, a more positive and significantly less expensive gain in aesthetics may be expected.**
- 3. Support FPL and the Florida Public Service Commission in the ongoing storm hardening initiative. The resulting stronger poles will not be noticed and a significant gain in reliability can be expected at no noticeable cost to the residents of Palm Beach.**
- 4. Join FPL in their ongoing efforts to inform the public about the hazards of working around high voltage equipment, whether overhead or underground or surface mounted. It is all safe as long as a few simple rules of approach are followed.**

In the above manner the resolved goals of improved safety, reliability and aesthetics may be reached in the same time frame at little or no cost to the Town of Palm Beach

The Law Offices of
BRETON, LYNCH, EUBANKS & SUAREZ-MURIAS, P.A.

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July 10, 2017

Via E-mail

Honorable Gail Coniglio, Mayor, and
Town Council of Town of Palm Beach
360 South County Road
Palm Beach, Florida 33408

Re: Objection to Underground Assessment

Dear Mayor and Town Council:

Our office represents Thomas O. McCarthy, the owner of that real property located on 140 Brazilian Avenue ("Property"). In that capacity we are in receipt of that notice ("Notice") from the Town Council of the Town of Palm Beach ("Town") for "an annual assessment for the design, acquisition, construction, and installation of the Underground Utility Improvement Area for the fiscal year of October 1, 2017 to September 30, 2018 and future fiscal years." ("Assessment")

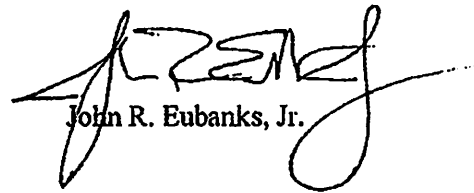
Please be advised that our client objects to the manner outlined in the Notice in which the Assessment is being made and collected, which is not in accordance with the representations made and information provided by the Town in its efforts to garner support for the referendum on the issue. Apparently, due to the two (2) pending lawsuits, the Town is unable to issue General Obligation Bonds for the purpose of undergrounding. As a result, the Town has chosen instead to utilize a combination of higher cost short term and long term debt to finance the "Underground Utility Improvements Project" ("Project"), a Project that many believe was ill conceived from the beginning and will continue to cause financial and logistical headaches in the future. At the same time, the residents clearly voted to use General Obligation Bonds and assessments to pay for the Project. This new method is different and therefore was not approved.

More importantly, and regardless of the method of payment, the underlying basis for the Project is flawed in that: a) there is no special benefit to Mr. McCarthy (or any other property owners) in that undergrounding is more susceptible to flooding and takes longer to repair after a storm than the alternative hardened wires (which would be provided at no cost), which makes the Project a poor choice on an island on which 75% of the property is in a Special Flood Hazard area; b) the special assessment is not "necessary" from a legal basis; c) undergrounding is not a "public project" as it is really being done not by the Town but by FPL, which does not have the right to use the Town's bonding or borrowing abilities by proxy; d) the assessment methodology proposed is flawed; and e) as noted, the residents voted (by the slimmest of margins which would not be duplicated today) to use General Obligation Bonds and assessment to pay them back, not short term and long term debt.

Honorable Gail Coniglio, Mayor, and
Town Council of Town of Palm Beach
July 10, 2017
Page 2

In light of the above, Mr. McCarthy would urge the Town not to move forward or make a final decision at the upcoming public hearing scheduled for July 12, 2017 at 5:01 p.m., but to instead listen to the Town's residents who no longer want this Project and did not agree to it proceeding in the manner proposed by the Town.

Very truly yours,



John R. Eubanks, Jr.

cc: Thomas O McCarthy
John Page, Director of Planning, Zoning and Building
Thomas Bradford, Town Manager
Paul Castro, Zoning Administrator
John C. "Skip" Randolph, Esq.
Town Clerk, Town of Palm Beach



ATTORNEYS AT LAW

SCOTT, HARRIS, BRYAN, BARRA & JORGENSEN, P.A.

July 10, 2017

Via Hand Delivery and Email: townmanager@townofpalmbeach.com

Thomas Bradford
Town Manager, Town of Palm Beach
360 South County Road
P.O. Box 2029
Palm Beach, FL 33480

RE: Ira and Sydell Smith
3170 South Ocean Boulevard, Apt. N705, Palm Beach, Florida 33480
Tax Parcel #: 50-43-44-26-08-001-7050
Legal Description: The Enclave of Palm Beach Condomit N-705

Dear Mr. Bradford:

I represent Ira and Sydell Smith. Please accept this letter as their objection to Resolution No. 119-2017, for the issuance of commercial paper revenue notes not to exceed \$22,650,000.00 for the Underground Utility Project, Resolution No. 120-2017 authorizing the approval of a note to exceed \$90,000,000.00 relative to financing the initial phase of the Underground Utility Project, and the proposed adoption of the Final Assessment Resolution for the undergrounding of utilities. My clients object to the two resolutions and proposed Final Assessment Resolution generally, as it applies to the entire Town, and specifically, as it applies to their property in Palm Beach.

The reasons for my clients' objections to the resolutions are numerous. They are set forth below:

1. The issuance of commercial paper not to exceed \$22,650,000.00 as interim financing to commence the project is in violation of the contract entered into between the Town and its residents. The contract was formed when a majority of the residents voted in favor of undergrounding utilities to be paid only by general obligation bonds payable from the Town's full faith and credit, ad valorem taxation and special assessments. The ballot question posed to the voters did not seek approval of other means of financing such as the issuance of \$22,500,000.00 in commercial paper. A similar issue was addressed by the

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* BOARD CERTIFIED BUSINESS LITIGATION LAWYER • BOARD CERTIFIED REAL ESTATE LAWYER

4400 PGA Boulevard, Suite 603 • Palm Beach Gardens, Florida 33410-6561
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RE: Ira and Sydell Smith
3170 South Ocean Boulevard, Apt. N705, Palm Beach, Florida 33480
Tax Parcel #: 50-43-44-26-08-001-7050
Legal Description: The Enclave of Palm Beach Conduit N

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Florida Supreme Court in *City of Fort Lauderdale v. Kraft*, 21 So.2d 461 (Fla. 1945). The method of payment of a sewage system through payment by revenue bonds had been approved by vote of the electorate. The Supreme Court held the plan for financing approved by the voters was a contract between the municipality and taxpayers and a change to pay for the system through special assessments was void as an unconstitutional impairment of the contract.

If the Town proceeds with interim financing, then it is breaching its contract with the residents and embarking on different and additional financing that was not approved by the voters. In the public campaign waged by the Town leading up to the bond referendum, the Town stated that the only financing would be through special assessments. Thereafter, the Town stated in the ballot that the undergrounding of utilities would be paid by the full faith and credit of the Town, ad valorem taxes and special assessments. Now, the Town is adding interim financing through the issuance of commercial paper. The Town is breaching its contract with the residents in a bum's rush to commence the project.

2. The methodology for determining the "special" benefit for individual properties town-wide is flawed. The calculations of safety EBUs, reliability EBUs and aesthetic EBUs is artificial, arbitrary and capricious. It is a game played with statistics in order to justify imposition of special assessments rather than ad valorem taxation. The electrical grid in Palm Beach benefits the entire Town. There is no special benefit to individual properties. If indeed there are benefits of safety, reliability, and aesthetics, those benefits are shared town-wide and the only appropriate manner in which to finance the undergrounding of the utilities would be through ad valorem taxation. Clearly, the Town should pay for the project through ad valorem taxation since the provision of utilities is a basic government function properly payable by taxation. If there is a shared benefit in undergrounding, then everyone should pay through ad valorem taxation based on property values. The Town should not use complicated formulas for computing special benefits to individual properties in order to redistribute the cost of the project unevenly, at the expense of property owners in the south end of Palm Beach.

Equally flawed is the calculation of safety, reliability and aesthetic EBUs for my clients' condominium unit. Since the EBU methodology is artificial, arbitrary and capricious, when it is applied to individual properties, it results in an erroneous special benefit calculation.

3. Underground utilities are not safer and are not more reliable than pole hardened utilities. Thus, there is no need for the project at all. Numerous experts have spoken on this issue and pole hardening is just as effective as undergrounding, and even more so on a barrier island where water intrusion will damage underground wires. Since the safety and reliability factors

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are based on false premises, then the special benefit methodology used on the individual properties through safety and reliability EBUs is flawed.

4. In order for a special assessment to be valid, it must be determined whether the services or capital improvements at issue provide a special benefit to the assessed property and whether the assessment is properly apportioned among all the properties that receive the special benefit. If undergrounding were actually needed, the only fair apportionment method would be by ad valorem taxation. Taxes based on property value are clearly defined and understood. Taxes based on property value are the accepted and traditional method of raising revenue for municipal services such as utilities. Use of reliability, safety and aesthetics EBUs results in imposition of special assessments skewed in favor of more valuable properties, which is the exact opposite of ad valorem taxation.
5. There is simply no need for the project, except for perhaps aesthetic reasons and it is not worth over \$90,000,000.00 to remove power poles from the island for aesthetics alone.
6. The installation of the many large high voltage boxes necessary for the undergrounding project is both hazardous and unsightly.
7. Of course, the project will end up costing substantially more than \$90,000,000.00.
8. Some of the neighborhoods in the Town already have undergrounding and have paid or are paying through the imposition of special assessments within their neighborhoods. Yet, these neighborhoods, at least according to the Town, will benefit from the enhanced safety and reliability of a town-wide electrical grid. This results in an unfair apportionment among properties.
9. Because of anticipated cost overruns and the issuance of commercial paper, special assessments will not pay the entire cost of the project. This may very well result in an increase in ad valorem taxation to cover additional costs. Thus, property owners will be saddled both with special assessments and higher ad valorem taxes to pay for an unneeded project.
10. There will be continuing disruption and annoyance created by the undergrounding construction project which isn't scheduled to be completed until 2026
11. The Town itself has changed the special assessment methodology recommended by its own experts for political reasons and to make it more palatable to residents in the south end of Town. By tinkering with the methodology, the Town has made the special benefit analysis

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even more flawed.

12. There are many different types of properties and homes in the Town of Palm Beach. Trying to assign safety, reliability and aesthetic EBUs to individual properties is an exercise in futility and further demonstrates the flaws in the special assessment methodology.
13. In order to meet the safety and reliability goals of undergrounding espoused by the Town, the project must be completed. Therefore, it is incumbent on the Town to have a completion bond to assure that this occurs.
14. The undergrounding project, including the installation of the high voltage boxes in a flood plain is in violation of the Department of Transportation permit as well as FEMA standards.
15. Undergrounding of utilities is far more appropriate for individual neighborhoods where neighbors decide amongst themselves whether to incur the cost and disruption of undergrounding. Further, special assessments are meant for specific geographic areas in need of capital improvements or services. Special assessments are not suited for town-wide projects more appropriately paid by ad valorem taxation.
16. As to my clients' individual property, his condominium receives little if any benefit from undergrounding whether through reliability, safety or aesthetics. All of the reasons against undergrounding cited above also apply and are reiterated for my clients' individual property.

Sincerely,



John M. Jorgensen

JMJ:kcf

cc: Gail Coniglio, Mayor
Richard M. Kleid, President
Danielle H. Moore, President Pro Tem
Julie Araskog, Council Member
Bobbie Lindsay, Council Member
Margaret Zeidman, Council Member



TOWN OF PALM BEACH

Town Manager's Office

October 12, 2017

Law Offices of John O'Neill
44 Coconut Row
Suite M209
Palm Beach, FL 33480

RE: Calculation of Non-Ad Valorem Assessment Regarding Underground Utilities Improvements for Multiple Parcels listed below:

1. Maurice J. Herman - 5 Sloan's Curve Dr. (PCN: 50-43-44-11-07-000-0050)
2. Camilo Raful - 11 Sloan's Curve Dr. (PCN: 50-43-44-11-07-000-0110)
3. Carolyn Sakolsky - 16 Sloan's Curve Dr. (PCN: 50-43-44-11-07-008-0010)
4. Tracy Markin - 17 Sloan's Curve Dr. (PCN: 50-43-44-11-07-008-0080)
5. Dan Marantz - 19 Sloan's Curve Dr. (PCN: 50-43-44-11-07-008-0070)
6. Robert Postal - 20 Sloan's Curve Dr. (PCN: 50-43-44-11-07-008-0060)
7. William Matheson - 22 Sloan's Curve Dr. (PCN: 50-43-44-11-07-008-0040)
8. Barbara C. Sidell - 23 Sloan's Curve Dr. (PCN: 50-43-44-11-07-008-0050)

Dear Mr. O'Neill,

This is in response to your appeal regarding the calculation of the Non-Ad Valorem assessment for the design, acquisition, construction, and installation of the Underground Utility Improvements for the fiscal year October 1, 2017 - September 30, 2018 and future fiscal years. Please note the Town did not, and does not, use Chapter 170 for implementation of its special assessment programs. The Town is proceeding under its home rule authority and in accordance with Chapter 197, F.S.

Upon review, it was determined by the Town Manager's Office the Residences at Sloan's Curve do not qualify as Non-Assessable or special consideration since the community is not listed within the approved methodology as a special case, exception or as a Non-Assessable Obligation. Therefore, the assessments are appropriately applied per Initial Assessment Resolution No. 090-2017 and the Utility Undergrounding Assessment Methodology adopted by the Town Council, June 13, 2017.

In light of the fact that your request has been denied, you are advised of your right to file a timely appeal in writing to the Town Council. If you choose to appeal, you should include a statement as to why your appeal should be granted and enclose a copy of this letter.

Additional queries pertaining to this matter can be directed in writing to myself or to Thomas G. Bradford, Town Manager to the postal or email address shown in the footer below.

Sincerely,



Steven N. Stern
Underground Utilities Project Manager

Town of Palm Beach
Town Manager's Office
360 S. County Road
Palm Beach, FL 33480
Office: 561-227-6307
www.townofpalmbeach.com

cc:

Thomas Bradford, Town Manager
Jane Struder, Director of Finance
Amy Wood, Accounting Supervisor