

**MEMORANDUM FOR TOWN COUNCIL MEETING
ON MAY 8, 2018**

TO: Mayor and Town Council

FROM: John D. O'Neill, Esq.
44 Coconut Row, Ste. M209
Palm Beach, Florida 33480

RE: Appeal from the Town's denial of The Residences at Sloan's Curve properties' exemption, exclusion, or Non-Assessable Obligation of the Town-Wide Undergrounding Utilities Project Special Assessment

DATE: May 3, 2018

SUMMARY OF FACTS AND CONCLUSIONS

The summary of facts and conclusions common to the eight property owners ("Property owners") within the PUD-B, Parcel 1, Sloan's Curve, specifically Phase III known as "The Residences at Sloan's Curve", include but are not limited to, the following:

- (i) The Property owner's properties are all within the PUD-B established by the Town between Years 1978 and 1979 after the Town's extensive review and approval of the developer's plans and subsequent Town Resolutions;
- (ii) The utilities for the properties located in The Residences at Sloan's Curve are already underground;
- (iii) The utility lines servicing the PUD-B properties are not above ground lines;
- (iv) The buried utility lines are on a loop within The Residences at Sloan's Curve and therefore do not service any other properties outside of The Residences at Sloan's Curve;
- (v) The Town-Wide Underground Project will not add or supplement the underground utilities that currently serve the properties within The Residences at Sloan's Curve;
- (vi) The Town-Wide Underground Project does not provide a "special benefit" to the Property owner's properties, as that term has been defined in Florida caselaw, and therefore the Special Assessments levied against the properties of the Property owners are an unconstitutional ad valorem tax camouflaged as a non-ad valorem special assessment;

(vii) There is no logical relationship, or legal nexus, between the services to be provided in the Town-Wide Underground Project and any purported benefit to the properties of the Property owners;

(viii) The Special Assessments for the Town-Wide Underground Project provide a personal benefit of a general nature for persons who reside or visit the Town of Palm Beach and accordingly does not provide a "special benefit" particular to the Property owner's properties;

(ix) The Town's Special Assessments levied against the properties of the Property owners are arbitrarily based on appraisal practices which differ from the appraisal practices generally applied by the Town to comparable properties with underground utilities such as Lake Towers Condominium, Via Fontana, and Everglades Island which have been excluded from the Special Assessment;

(x) The assumptions underlying the Town's apportionment methodology fail to properly apportion, in a fair and reasonable manner, the claimed "special benefits" to the properties of the Property owners;

(xi) The Town's Special Assessments levied against each of the properties of the Property owners are arbitrary and capricious because the Town has not set forth any competent substantial evidence that the Special Assessments will create a special benefit for each of the Property owner's properties and that the purported special benefit exceeds the amount of each Property owner's special assessment;

(xii) The Town imposes special assessments on The Residents at Sloan's Curve properties while not imposing the same on some other similar properties; and

(xiii) The Town has exercised governmental, corporate or proprietary power in violation of the Fourteenth Amendment of the United States Constitution, Article VII, Sections (1)(a) and (9)(a) of the Florida Constitution, and Section 166.021(3)(b), Florida Statutes.

RECOMMENDATION

Based on any one or more of the foregoing facts, the Town Council should vote to exempt, exclude, or identify as Non-Assessable the properties of The Residences at Sloan's Curve and/or the Property owners relative to the Town's Special Assessments levied under Resolutions 90-2017 and 100-2017.

TABLE OF CONTENTS AND CHRONOLOGY OF SUPPORTING DOCUMENTS

<u>EXHIBIT IDENTIFICATION</u>	<u>ITEM DESCRIPTION</u>
	No Change in Already Undergrounded Utilities Lines
A.	FP&L aerial photo with overlay sketch of current underground utilities for The Residences at Sloan's Curve
B.	Photos of underground electrical vault and transmission cables servicing The Residences at Sloan's Curve
C.	Photo of North view from Sloan's Curve with no overhead lines or poles feeding into The Residences at Sloan's Curve
	No Change in Safety
D.	Photos of current street and electrical meter to homes
	No Change in Reliability
E.	Photos of current electrical transformer boxes and Comcast pedestals
	No Change in Aesthetics
F.	Photos of along street and around houses with no overhead lines or poles
	Dense landscaping and wall surrounding The Residences at Sloan's Curve

<u>EXHIBIT IDENTIFICATION</u>	<u>ITEM DESCRIPTION</u>
	1978 - 1979 Planned Unit Development Plan - Parcel 1, Sloan's Curve - "PUD-B District"
G.	Town adopted on May 2, 1978 the Tentative Approval of the Planned Unit Development Plan for the Sloan's Curve Property by vote of the Town Council of the Town of Palm Beach in Resolution No. 16-78 ("Resolution 16-78")
H.	Town adopted on May 23, 1978 the Amended Tentative Approval of the Planned Unit Development Plan for the Sloan's Curve Property by vote of the Town Council in Resolution No. 19-78 ("Resolution 19-78") amending Resolution 16-78
I.	Town adopted on June 13, 1978 the Second Amended Tentative Approval of the Planned Unit Development Plan for the Sloan's Curve Property by vote of the Town Council in Resolution No. 20-78 ("Resolution 20-78") amending Resolutions 16-78 and 19-78
J.	Town adopted on October 10, 1978 the Third Amended Tentative Approval of the Planned Unit Development Plan for the Sloan's Curve Property by vote of the Town Council in Resolution No. 35-78 ("Resolution 35-78") amending Resolutions 16-78, 19-78 and 20-78
K.	Town adopted on September 11, 1979 the Final Approval of the Planned Unit Development for Sloan's Curve Property by vote of the Town Council in Resolution No. 27-79 ("Resolution 27-79") amending Resolutions 16-78, 19-78, 20-78 and 35-78
L.	Letter to Town Building Manager, Robert Moore, dated October 7, 1981 evidencing issuance of Certificates of Occupancy during FP&L completion of their burying of underground utility lines for The Residences at Sloan's Curve (Phase III)
	October 13, 2009
M.	Town adopted Town of Palm Beach Utility Underground Methodology prepared by Willdan Financial Services ("Willdan Report")

<u>EXHIBIT IDENTIFICATION</u>	<u>ITEM DESCRIPTION</u>
	June 2, 2017
N.	Town replaces the Willdan Report with the Utility Undergrounding Assessment Methodology Update prepared by Raftelis Financial Consultants Inc. ("Raftelis Report #1")
	June 12, 2017
O.	Town supplemented and/or replaced the Raftelis Report #1 with the Utility Undergrounding Assessment Methodology Update prepared by Raftelis Financial Consultants Inc. ("Raftelis Report #2")
	June 13, 2017
	Town Council adopted the Raftelis Report #2 as the method of assessment for the Town-Wide Underground Project.
P.	Town adopted the Initial Assessment Resolution by vote of the Town Council of the Town of Palm Beach in Resolution No. 90-2017 ("Resolution 90-2017")
	July 12, 2017
Q.	Town submitted the Special Assessment to the Town Council of the Town of Palm Beach in Resolution No. 100-2017 ("Resolution No. 100-2017")
R.	At the Town Council meeting on July 12, 2017, property owners and residents appeared on the record, and voiced their overwhelming opposition to Resolution No. 100-2017
	The Town, through its Town Council, denied the property owners' opposition to Resolution 100-2017, and voted to approve the Special Assessments pursuant to Resolution 100-2017

<u>EXHIBIT IDENTIFICATION</u>	<u>ITEM DESCRIPTION</u>
	August 1, 2017
S.	Letter from Attorney John O'Neill to the Town setting forth the Property owner's Complaint to Reduce Special Assessment levied per Resolution 100-2017 from the Town-Wide Underground Utilities Project and the rational for their claim of exclusion, exemption, or reduction (August 1, 2017 Complaint")
	September 20, 2017
T.	Second letter from Attorney John O'Neill to the Town requesting a response from the Town Manager on the August 1, 2017 Complaint letter and reiterating the Property owner's rational for their exclusion or exemption from the Town-Wide Underground Utilities Assessment
U.	Email from Town Manager Thomas Bradford to Attorney John O'Neill stating that the August 1, 2017 Complaint has not been finalized due to the "complexities" associated with the subject properties
	October 12, 2017
V.	Letter from Utilities Project Manager Steven Stern to Attorney John O'Neill stating that after a review by the Town it was determined that The Residences at Sloan's Curve do not qualify as an exception, Non-Assessable Obligation, or special case because the properties were not listed as such in the Raftelis Report #2
W.	Letter from Utilities Project Manager Steven Stern to Mr. and Mrs. Carney Hawks of 4 Sloan's Curve Drive stating that after supplemental survey of The Residences at Sloan's Curve the Town determined that their Town Special Assessment should be reduced because there are no overhead utilities adjacent to their property
	October 27, 2017
X.	Third letter from Attorney John O'Neill to the Town appealing the purported denial letter from Steven Stern's October 12, 2017 letter

<u>EXHIBIT IDENTIFICATION</u>	<u>ITEM DESCRIPTION</u>
	November 28, 2017
Y.	Letter from Town Manager Thomas Bradford to Attorney John O'Neill stating that after the Town "reviewed the facts in detail" there is no alleged error in the Town Manager's application of the assessments because the Town "proactively" determined a discount for some of the Property owners, the Property owner's properties do not qualify as Non-Assessable since none were listed as such in the Special Cases and Exemptions of the Raftelis Report #2
	December 1, 2017
Z.	Email from Town Project Manager Steven Stern with attachments containing Corrected Special Assessment Notices for three of the Property owners located at 5, 11 and 22 Sloan's Curve Drive
	December 7, 2017
AA.	Public records request email from Attorney John O'Neill to Steven Stern requesting any materials and correspondence the Town intended to rely upon in opposition to the August 1, 2017 Complaint and subsequent letters from Attorney O'Neill
	April 26, 2018
BB.	Second request for production of the Town's public records previously requested on December 7, 2017 and additional documents to be provided by Town Project Manager, Steven Stern
	April 26, 2018
CC.	Email from Town Project Manager Steven Stern with attachments - excluding correspondence and emails between Attorney John O'Neill and the Town set forth above - represented to be all of the Town's documents relied upon by the Town in opposition to the Property owner's August 1, 2017 Complaint and subsequent follow up letters

<u>EXHIBIT IDENTIFICATION</u>	<u>ITEM DESCRIPTION</u>
	Florida caselaw requiring “Special Benefit” be Substantiated by the Town of Palm Beach
DD.	<u>Indian Creek Country Club, Inc. v. Indian Creek Village</u> , 211 So.3d 230, 234 (Fla. 3 rd DCA 2017) - If there is no supporting rationale, evidence or benefit analysis in the methodology report, the special assessments for the subject properties are in the nature of an illegal ad valorem tax because there is no corresponding special benefit.