EXHIBIT AA

john2@jdopa.com

From: John O'Neill <john@jdopa.com>
Sent: Thursday, December 7, 2017 7:43 PM
To: Steven Stern
Subject: Town-Wide Underground Utilities Special Assessment-Notice of Appeal and prior complaint letters

Dear Steven,
Thank you for sending me the corrected special assessment letters sent to three of my clients.

Please advise at your earliest convenience of the scheduling of the appeal hearing for the next Town Council meeting and what testimony/evidence the Town intends on submitting in opposition.

Kindly forward any materials and correspondence the Town intend to rely upon in opposition to my letter dated August 1, 2017 and my follow-up correspondence. Moreover, permit this email to be a public records request for said requested documents.

Should you have any questions, please call me.

Best regards,
John O'Neill, Esq.

Sent from my iPhone

On Dec 7, 2017, at 9:41 AM, Steven Stern <sstern@TownOfPalmBeach.com> wrote:

> Mr. O'Neill,
>
> Per your request, attached are the corrected notices reducing the assessment which were sent by the Town to 5, 11 and 22 Sloan's curve.
>
> **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

> **From:** Steven Stern
> **Sent:** Friday, December 01, 2017 11:12 AM
> **To:** 'john@jdopa.com' <john@jdopa.com>
> **Subject:** Tom Bradford Letter re: Appeal
>
> Mr. O'Neill,
> Attached is the letter I mentioned in my voice mail reply to you today.

Thank you,
Steve

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

<5 Sloans Curve 50-43-44-11-07-000-0050.pdf>

<11 Sloans Curve 50-43-44-11-07-000-0110.pdf>

<22 Sloans Curve 50-43-44-11-07-008-0040.pdf>

<TB Letter Denying Appeal Oneil Sloans Curve.pdf>

EXHIBIT BB

John O'Neill

From: John O'Neill <john@jdopa.com>
Sent: Friday, April 27, 2018 8:08 PM
To: 'Steven Stern'
Cc: townclerk@townofpalmbeach.com
Subject: Town-Wide Underground Utilities Special Assessment- Public Records Request

Dear Steven,

As you know, the Town Council has scheduled a time certain of 2:00PM on Tuesday, May 8th to hear my clients' appeal of their complaint to the Town-Wide Underground Utilities Special Assessment.

You may recall that on December 7, 2017 I sent you a public records request for documents pertaining to the Town's denial of my clients' request for a reduction of their underground utility special assessment. My December 7, 2017 email is provided below for your quick review. To date almost five months have passed and I have not received any of the public records I have requested.

With the Thursday, May 3rd deadline to submit documentation in the Town Council backup now fast approaching, it is imperative that you provide me the documents set forth in my December 7th public records request by no later than Monday, April 30th. My clients will certainly be prejudiced by the Town's unreasonable delay in producing these public records.

Also, as we discussed, you stated that you would provide me by the end of business today each of my client's assessment notices with the specific EBU breakdowns, any changes (ie. reductions) to any Sloan's Curve Drive special assessments, the supplemental site survey conducted for the Sloan's Curve Drive neighborhood and the documentation supporting the accompanying EBU changes to assessments based on said survey. To date, I did not receive any of these documents from you.

If you are unable to comply with my December 7th public records request and our prior document production agreement by Monday, please advise me immediately so that we can reschedule my client's May 8th appeal for the following month as these underlying documents directly relate my client's appellate rights in this matter and accordingly their rights to procedural and substantive due process.

In light of the foregoing, all rights are hereby reserved to supplement the arguments presented in my complaint and appeal, should the need arise.

Best regards,
John O'Neill, Esq.

CC: Clients

John D. O'Neill, P.A.
44 Cocoanut Row, Suite # M209
Palm Beach, FL 33480
Telephone: (561) 366-1212
Fax: (561) 366-1236
E-Mail: john@jdopa.com

From: John O'Neill <john@jdopa.com>
Sent: Thursday, December 7, 2017 7:43 PM
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Subject: Town-Wide Underground Utilities Special Assessment-Notice of Appeal and prior complaint letters

Dear Steven,
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EXHIBIT CC

John O'Neill

From: Steven Stern <sstern@TownOfPalmBeach.com>
Sent: Friday, April 27, 2018 11:08 PM
To: John O'Neill
Cc: Town Clerks Staff
Subject: RE: Town-Wide Underground Utilities Special Assessment- Public Records Request
Attachments: TC Memo 050818 - Oneill Appeal.pdf; Attachments for Appeal Memo.zip; Oneill - Town-Wide Underground Utilities Special Assessment-Notice of Appeal and prior complaint letters.pdf; Sloans Curve EBU.pdf

Dear John,
Attached you will find the requested documentation for the scheduled time certain 2:00PM, Tuesday, May 8th appeal of the Town-Wide Underground Utilities Special Assessment for your clients.

The attached "TC Memo 050818 – O'Neill Appeal.pdf" and "Attachments for Appeal Memo.zip" are the materials and correspondence the Town intends to rely upon in opposition to your letter dated August 1, 2017 and follow-up correspondence.

Regarding our recent telephone discussion to provide your client's assessment EBU breakdowns I had asked you to send your request in writing. Responding to that specific request received earlier this evening, please see attached "Sloans Curve EBU.pdf" for the comprehensive summary. Also see attached pdf of the email received from you on Dec 7, 2017 thanking me for sending you a copy of the Town's corrected special assessment letters sent to three of your clients namely, 5, 11 and 22 Sloan's Curve. You will find the Town's explanation of the EBU correction for these three properties on page 3 of the "TC Memo 050818 – O'Neill Appeal.pdf" saying, "Parcels Townwide and within Sloan's Curve which are non-adjacent to overhead utilities qualify and received the Undergrounding Safety and Aesthetic assessment discount. The discount was applied to parcel numbers 1, 2 and 7 (5, 11 and 22 Sloan's Curve). Parcels 3, 4, 5, 6 and 8 (16, 17, 19, 20 and 23 Sloan's Curve) do not qualify for the discount pursuant to the approved assessment apportionment method. See Figure 1."

I believe this email and attachments fully address your questions and hope to see you on May 8th.

Best regards,
Steve

Steven N. Stern
Underground Utilities Project Manager

Town of Palm Beach
Town Manager's Office
360 S. County Road
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Office: 561-227-6307

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> Office: 561-227-6307

TOWN OF PALM BEACH
Information for Town Council on: May 8, 2018

TO: Mayor and Town Council

VIA: Kirk Blouin, Town Manager

FROM: Steven Stern, Project Manager

RE: Town Council Appeal to Reduce the Special Assessment, Attorney John O'Neill for 8 Residences of Sloan's Curve

DATE: April 26, 2018

TIMELINE AND GENERAL INFORMATION

Attorney John O'Neill represents eight (8) property owners at Sloan's Curve who have challenged the calculation of the Non Ad Valorem Assessment for Palm Beach Underground Utilities.

August 1, 2017:

Attorney John O'Neill filed an assessment appeal on behalf of the below eight (8) property owners in the Town of Palm Beach challenging the calculation of the undergrounding assessment:

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)

Attachment 1:

John O'Neill to Town Council RE: Town of Palm Beach Equalization Board Complaint to Reduce Special Assessment levied per Resolution No. 100-2017

October 12, 2017:

The appeal was reviewed and denied by Tom Bradford, Town Manager who directed Steven Stern, Project Manager to inform Mr. O'Neill. Reason for denial was 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. The assessments were determined as appropriately applied per Initial Assessment Resolution No. 090-2017 and the Utility Undergrounding Assessment Methodology adopted by the Town Council, June 13, 2017.

Attachment 2:
Assessment Appeal Form indicating decision of the Town Manager

Attachment 3:
Communication from Steven Stern Project Manager on behalf of the Town Manager.

October 27, 2018:

Mr. O'Neill wrote to the Town Clerk stating: "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...."

Attachment 4:
John O'Neill to Town Clerk: RE: Town of Palm Beach Underground Utilities Project Notice of Appeal of Complaint to Reduce Special Assessment levied per Resolution No. t00-2017

November 28, 2017:

Mr. O'Neill's requests for appellate review by the Town Council were denied by the Town Manager stating the following:

- The original assessment appeal was denied by the Town Manager. The letter informing you of my decision was sent by staff, namely Steven Stern, Underground Utilities Project Manager.

- The above properties do not qualify as Non-Assessable since none are specified in the approved assessment methodology (assessment apportionment method) section 4.4 Special Cases and Exemptions.

- There is no alleged error in the Town Manager's application of the assessment apportionment method. Note that parcel numbers 1, 2 and 7 have already been

proactively adjusted by the Town to apply the undergrounding assessment discount. The other listed parcels do not qualify for the discount pursuant to the approved assessment apportionment method.

- An appeal to the Town Council objecting to any aspect of the assessment apportionment methodology is an invalid appeal pursuant to the Town Code and cannot be allowed to proceed via the appeals process.

Attachment 5:
Letter from Tom Bradford, Town Manager denying appellate review.

December 21, 2017:

Mr. O'Neill contacted Steven Stern, Project Manager requesting clarification why his request for appellate review was denied. He was informed the Town Manager referenced the Town Code section Sec. 90-49. - Correction of errors and omissions (c), describing that the escalation request to the Town Council was invalid since there was no error made in the application of the assessment methodology.

Attachment 6:
Email from Steven Stern, Project Manager to John O'Neill.

February 23, 2018:

John O'Neill contacted the Project Manager again requesting appellate review by the Town Council. Project Manager discussed the request with Kirk Blouin, Town Manager and the Town Attorney who instructed Staff to schedule Mr. O'Neill's appeal.

STAFF RECOMMENDATION

After reviewing the original complaint and all related correspondence between the Town and Mr. O'Neill, Staff recommends the Town Council uphold the previous and current Town Manager's decision to deny the assessment appeal for the following reasons:

- The properties at Sloan's Curve do not qualify as Non-Assessable. The neighborhood, subdivision or properties are not specified in the approved assessment methodology section 4.4 Special Cases and Exemptions.
- There is no error in the Town Manager's application of the assessment apportionment method.
- Parcels Townwide and within Sloan's Curve which are non-adjacent to overhead utilities qualify and received the Undergrounding Safety and Aesthetic assessment discount. The discount was applied to parcel numbers 1, 2 and 7 (5, 11 and 22 Sloans's Curve). Parcels 3, 4, 5, 6 and 8 (16, 17, 19, 20 and 23 Sloan's Curve) do not qualify for the discount pursuant to the approved assessment apportionment method. See Figure 1.

- Granting this appeal would be inconsistent with the Town's approved methodology, which has been applied uniformly throughout the Town's assessment area.

Figure 1: Residences at Sloan's Curve

Townwide Underground Project Assessment Appeal Form

Date of Appeal: Aug 1 2017

Name of Property Owner: Multiple represented by Attorney Oneill

Address of Property: Residences of Sloans Curve

PCN#: Multiple

Contact Information: John Oneill 44 Cocoanut Row M209 Palm Beach, FL 33480

Dropbox File Name:

				Yes/No	Safety	Reliability	Aesthetics
	Acres	Land Use	Sq Ft	Overhead	EBU	EBU	EBU
Current Assessment Calculation	various	various		YES	Various	Various	Various
Proposed Assessment Calculation							

Description of Appeal: Believes parcels should be considered as a special case due to being underground within the community.

Staff Recommendation Approve ☐ Deny ☑

Reason for Recommendation: No parcels are a special case. None are exempt.

Steven Stern
Name

Steven Stern Digitally signed by Steven Stern Date: 2017.09.04 13:13:54 -04'00'
Signature

Town Manager Recommendation Approve ☐ Deny ☑

Reason for Recommendation

Thomas G. Bradford, Town Manager
Name

Thomas G. Bradford
Signature

	Original EBUs				Revised EBUs				
Address	Safety	Reliability	Aesthetic	Total	Safety	Reliability	Aesthetic	Total	Change
5 SLOANS CURVE DR	0.50	0.76	0.50	1.76	0.25	0.76	0.25	1.26	-0.50
11 SLOANS CURVE DR	0.50	0.76	0.50	1.76	0.25	0.76	0.25	1.26	-0.50
22 SLOANS CURVE DR	1.00	1.00	1.00	3.00	0.50	1.00	0.50	2.00	-1.00
16 SLOANS CURVE DR	1.50	1.00	1.50	4.00					
17 SLOANS CURVE DR	1.50	1.00	1.50	4.00					
19 SLOANS CURVE DR	1.00	1.00	1.00	3.00					
20 SLOANS CURVE DR	1.50	1.00	1.50	4.00					
23 SLOANS CURVE DR	1.00	1.00	1.00	3.00					

EXHIBIT DD

211 So.3d 230
District Court of Appeal of Florida,
Third District.

INDIAN CREEK COUNTRY CLUB,
INC., etc., Appellant/Cross–Appellee,
v.
INDIAN CREEK VILLAGE,
etc., Appellee/Cross–Appellant.

No. 3D14–439
|
Opinion filed January 18, 2017.

Synopsis

Background: Private country club brought actions against village challenging legality of two years of special assessments to support the village's police department. Actions were consolidated. The Circuit Court, Miami-Dade County, Marc Schumacher, J., granted partial summary judgment in favor of village, declaring a prior agreement between village and country club to be void, and after a bench trial, entered final judgment that special assessments were invalid, but that amendment to assessments statute was validly enacted. Country club appealed.

Holdings: The District Court of Appeal, Suarez, C.J., held that:

[1] village's two years of special assessments on country club land were not supported by competent substantial evidence as to the special benefit for the land or the assessments' fair apportionment;

[2] amendment to special-assessments statute at issue related to the subject matter of the bill, and it thus did not violate the single-subject rule; and

[3] membership in or marriage to a member of club by mayor and three council members did not constitute a statutory conflict of interest when they voted on prior agreement regarding future special assessments on club.

Affirmed in part and reversed in part.

West Headnotes (17)

[1] **Municipal Corporations**
🔑 General or special

Municipal Corporations
🔑 Apportionment of Benefits and Expenses of Improvement

A valid special assessment must meet two requirements: (1) the property assessed must derive a special benefit from the service provided, and (2) the assessment must be fairly and reasonably apportioned according to the benefits received.

Cases that cite this headnote

[2] **Municipal Corporations**
🔑 Scope of inquiry and powers of court

The two prongs of the test to determine the validity of a special assessment, i.e., special benefits provided to the property and fair apportionment of the assessment, both constitute questions of fact for a legislative body rather than the judiciary.

Cases that cite this headnote

[3] **Municipal Corporations**
🔑 Scope of inquiry and powers of court

The standard of review by the District Court of Appeal is the same for both prongs of the test of the validity of a special assessment; that is, the legislative determination as to the existence of special benefits and as to the apportionment of the costs of those benefits should be upheld unless the determination is arbitrary.

Cases that cite this headnote

[4] **Municipal Corporations**
🔑 Appeal from Assessment

An unpopular decision as to a special assessment, when made correctly, must be upheld by the District Court of Appeal.

Cases that cite this headnote

[5] **Municipal Corporations**
⇦ Scope of inquiry and powers of court

The apportionment of benefits is a legislative function, and if reasonable people may differ as to whether the land assessed was benefited by the local improvement, the finding of the city officials must be sustained when reviewing city's special assessment.

Cases that cite this headnote

[6] **Municipal Corporations**
⇦ Proceedings and relief

If there is no competent substantial evidence in the record to support a finding of benefit to the land assessed, then the presumption of correctness does not attach to the municipality's findings of special benefit in support of special assessment, and then the District Court of Appeal must review the trial court's decision based on ordinary findings of fact.

Cases that cite this headnote

[7] **Municipal Corporations**
⇦ General or special

A legislative body cannot by its fiat make a special benefit to assessed land to sustain a special assessment where there is no special benefit.

Cases that cite this headnote

[8] **Municipal Corporations**
⇦ Pleading and evidence

Village's two years of special assessments on country club property for security and law enforcement services were not supported by competent substantial evidence as to the special benefit for the land or that benefits were in proportion to the assessments, and thus the special assessments were invalid; village's tax consultant assigned an estimate of how many equivalent residential units were on club property, although property contained non-residential golf course and tennis court areas, consultant did not consider how club actually used its real property, and there was no evidence that the special assessments reduced insurance premiums or increased property values. Fla. Stat. Ann. § 170.201(1).

Cases that cite this headnote

[9] **Appeal and Error**
⇦ Cases Triable in Appellate Court

District Court of Appeal would review de novo the trial court's conclusions of law on the issue of whether the single-subject rule was violated by amendment to special-assessments statute, in action by private country club challenging a village's special assessment. Fla. Stat. Ann. § 170.201 (2011).

Cases that cite this headnote

[10] **Constitutional Law**
⇦ Presumptions and Construction as to Constitutionality

Statutes come clothed with a presumption of constitutionality and must be construed whenever possible to effect a constitutional outcome.

Cases that cite this headnote

[11] **Constitutional Law**
⇦ Doubt

Should any doubt exist that an act is in violation of any constitutional provision, the presumption is in favor of constitutionality.

Cases that cite this headnote

[12] **Constitutional Law**
⇦ Intent of and Considerations Influencing Legislature

Constitutional Law
⇦ Proof beyond a reasonable doubt

To overcome the presumption in favor of a statute's constitutionality, the invalidity must

appear beyond reasonable doubt, for it must be assumed the legislature intended to enact a valid law.

Cases that cite this headnote

[13] **Statutes**
⇦ In general;construction of title

Given the presumption of a statute's constitutionality and legislative validity, the "single subject rule" requires that (1) the law embrace one subject, (2) the law may include any matter that is "properly connected" to the subject, and (3) the subject shall be briefly included in the title.

Cases that cite this headnote

[14] **Statutes**
⇦ Acts Relating to One or More Subjects; Single-Subject Rule

An amendment or provision is "properly connected" to the subject under the single-subject rule if the connection is natural or logical, or if there is a reasonable explanation for how the provision is necessary to the subject, or tends to make the purpose of the legislation more effective.

Cases that cite this headnote

[15] **Constitutional Law**
⇦ Proof beyond a reasonable doubt

Constitutional Law
⇦ Burden of Proof

The party challenging the validity of legislation must prove invalidity beyond a reasonable doubt.

Cases that cite this headnote

[16] **Municipal Corporations**
⇦ Constitutional Requirements and Restrictions

Statutes
⇦ Government property, facilities, and funds

Amendment to special-assessments statute authorizing municipalities of fewer than 100 persons to levy special assessments to fund security services related to government accountability, which was the subject matter of the bill, and it thus did not violate the single-subject rule; the title and substance of the bill were not so unrelated to the bill's overall nature to warrant a finding of unconstitutionality. Fla. Stat. Ann. § 170.201 (2011).

Cases that cite this headnote

[17] **Municipal Corporations**
⇦ Agreement, conveyance, or dedication between municipality and owner of property

Public Employment
⇦ Ethics and conflicts of interest in general

Membership in, or marriage to a member of, private country club by mayor and three village council members did not constitute a statutory conflict of interest when they voted on an agreement between village and club that contained language limiting any future special assessments to the club's current ad valorem tax rate, and thus the agreement was not voidable based on the alleged conflict of interest; impact of the agreement on the financial interests of the mayor and council members was speculative. Fla. Stat. Ann. §§ 112.3143, 170.201.

Cases that cite this headnote

***232** An appeal from the Circuit Court for Miami–Dade County, Marc Schumacher, Judge. Lower Tribunal Nos. 10–29182 & 11–32522

Attorneys and Law Firms

Akerman LLP and Carmen I. Tugender (Ft. Lauderdale); Akerman LLP and Gerald B. Cope, Jr., Brian P. Miller, and Michael B. Chavies, for appellant/cross-appellee.

Weiss Serota Helfman Cole & Bierman, P.L. and Edward G. Guedes, Joseph H. Serota, Stephen J. Helfman, and John J. Quick, for appellee/cross-appellant.

Before SUAREZ, C.J., and LAGOA and LOGUE, JJ.

Opinion

SUAREZ, C.J.

Indian Creek Country Club appeals from two final orders: 1) a Final Judgment in the Club's favor finding certain special assessments to be invalid, and 2) Partial Final Summary Judgment in favor of Indian Creek Village ["the Village"] finding a 1996 Agreement between the two entities void. Indian Creek Village cross-appeals from the special assessments Final Judgment. For the reasons detailed below, we affirm the trial court's Final Judgment in favor of the Club but we reverse the trial court's Partial Final Summary Judgment wherein the trial court declared the 1996 Agreement to be void.

FACTS

The Village is a coastal Florida municipality within whose boundaries exists Indian Creek Island, on which the gated, private Indian Creek Country Club ["Club"] is located. The Club operates a golf course, clubhouse, docks and tennis courts for its members. The Island also has 41 single family homes, and is connected to the mainland Village by a public road and bridge with guardhouse, although the Island is entirely private. The Club is accessed by private road; most of the Club's 300 members live elsewhere. The Village has its own land and marine police force to provide 24/7 law enforcement and traffic services to Village residents and also provides ***233** general law enforcement and police assistance to the Club and Village residents on the Island. The Club pays approximately $34,000 in ad valorem taxes to the Village to cover the annual cost of these services.

In 2008, the Village hired a contractor, Government Services Group, Inc., ["GSG"] to evaluate the Village's budget and to develop a special assessments to support the police department, as well as to recommend how to apportion such an assessment. GSG determined that 97% of the police department's time and budget were spent on security matters such as manning the guard house that controls access to the Island and providing for ground and water patrol of the Island. GSG recommended a special assessment to cover that 97%. GSG recommended that the special assessment be allocated based on what it termed "an equivalent residential unit" (ERU). Each residential buildable lot was to be assigned one ERU. Therefore, each of the residential buildable lots was assessed $25,510 (the amount of one ERU). The GSG recommended assigning 33.02 ERU's to the Club's Golf Course property arriving at a proposed special assessment of $843,340.00 for the Club. In 2010, based on GSG's recommendations, the Village passed an $843,340.00 special assessment against the Club for security services intended to cover 97% of the Village's police budget. The Club brought a declaratory judgment action against the Village to challenge the legality of the assessment. While that suit was pending, the Village obtained passage of legislation in the 2011 session, by floor amendment, that amended Florida's special assessment statute to say "a municipality that has a population fewer than 100 persons ... may also levy and collect special assessments to fund special security and crime prevention services and facilities, including guard and gatehouse facilities." § 170.201(1) Fla. Stat. (2011). This amendment was added to a bill entitled "An Act relating to local government accountability." The Village imposed the special assessment on the Club in 2011, increasing the Club's taxes to $1,724,763.00.[1] The Club brought another suit to challenge the 2011 assessment and the two cases were consolidated. The Club argued that this amendment violated the single subject act, as the tacked-on amendment had no logical relationship to the bill.

Additionally, as part of the proceedings below, the Village asked the trial court to set aside a 1996 Agreement between the Village and the Club, which Agreement canceled the Village's lease of the road and bridge from the Club, gave the bridge to the Village in as-is condition, and gave the Village the right to patrol the Club's private road for the sole purpose of "enforcing State and County traffic laws." The 1996 Agreement also provided that if there were any special tax assessments levied against all property in the Village, the Club would be assessed in the same proportion as its assessment for ad valorem taxes. The Village moved for partial summary judgment on its request to invalidate the 1996 Agreement, arguing that several of the Village Councilmembers voting on the Agreement in 1996 were, at that time, Club members, which, the Village argued, created a conflict of interest. The trial court granted partial summary judgment in favor of the Village on this issue, concluding that the Councilmembers who were also Club members should not have voted as they stood to gain special private benefit from the Agreement.

After a bench trial, the court ruled that, 1) the 2010 special assessment against the Club was invalid for failing to meet

either *234 prong of the two-part test for evaluating the validity of such special assessments as set forth in City of Boca Raton v. State, 595 So.2d 25 (Fla. 1992), 2) the 2011 special assessment was invalid for failing to meet the second prong of the two-part test, but, 3) also found that the 2011 statutory amendment was validly enacted and satisfied the first part of the two-part test by conferring a special benefit on the property so assessed, rejecting the Club's single-subject violation argument.

The Club appeals from that part of the final declaratory judgment finding special benefit to the Club based on the 2011 statutory amendment, despite the favorable ruling finding the 2011 assessment invalid. The Club also appeals from the order granting the Village's Amended Motion for Partial Summary Judgment invalidating the 1996 Agreement.

THE 2010–2011 SPECIAL ASSESSMENTS

[1] [2] [3] [4] "[A] valid special assessment must meet two requirements: (1) the property assessed must derive a special benefit from the service provided; and (2) the assessment must be fairly and reasonably apportioned according to the benefits received." Sarasota Cty. v. Sarasota Church of Christ, 667 So.2d 180, 183 (Fla. 1995) (citing City of Boca Raton v. State, 595 So.2d 25, 30 (Fla. 1992)). "These two prongs both constitute questions of fact for a legislative body rather than the judiciary." Id. at 183. "[T]he standard [of review] is the same for both prongs; that is, the legislative determination as to the existence of special benefits and as to the apportionment of the costs of those benefits should be upheld unless the determination is arbitrary." Id. at 184; City of Winter Springs v. State, 776 So.2d 255, 258 (Fla. 2001). "Even an unpopular decision, when made correctly, must be upheld." Id. at 261. See also Morris v. City of Cape Coral, 163 So.3d 1174, 1176–77 (Fla. 2015).

[5] [6] "The apportionment of benefits is a legislative function, and if reasonable people may differ as to whether the land assessed was benefitted by the local improvement, the finding of the city officials must be sustained." Rosche v. City of Hollywood, 55 So.2d 909 (Fla. 1952); City of Boca Raton, 595 So.2d at 30. But if there is no competent substantial evidence in the record to support a finding of benefit, then the presumption of correctness does not attach to the municipality's findings of special benefit—and then the court must review the trial court's decision based on ordinary findings of fact. See City of N. Lauderdale v. SMM Properties, 825 So.2d 343, 348 (Fla. 2002). That test was set forth in Lake County v. Water Oak Management Corp., 695 So.2d 667, 669 (Fla. 1997). In Lake County, the Court stated that "In evaluating whether a special benefit is conferred to property by the services for which the assessment is imposed, the test is not whether the services confer a 'unique' benefit or are different in type or degree from the benefit provided to the community as a whole; rather the test is whether there is a 'logical relationship' between the services provided and the *benefit to real property*." Id. [emphasis supplied].

[7] In reviewing the record, this Court must ascertain whether it contains competent substantial evidence that the special assessments against the Club property for security and law enforcement services would confer a special benefit to the Club's real property (i.e., golf course, clubhouse, tennis courts) in reduction of insurance costs, increased property values, etc., that the benefits would exceed the amount of the assessments, and that the benefits would be in proportion to the assessments. See City of Boca 595 So.2d at 30; *235 City of N. Lauderdale v. SMM Properties, 825 So.2d 343, 348 (finding that no competent substantial evidence supported the municipality's findings that the special assessment provided special benefit to the properties, although the municipality did make general findings that there was a special benefit to the assessed property). Just saying it is so does not make it so: "a legislative body cannot by its fiat make a special benefit to sustain a special assessment where there is no special benefit." Id. at 348 (citations omitted).

The trial court found record evidence that:

- At no time does the Club use services of on-duty police officers to provide security for Club events;
- The Village's full-time police officers patrol the road to the island where the Club exists;
- The Village's marine patrol supports the sovereign function of the Village to protect its citizens and property by deterring crime; the marine patrol keeps the public from coming ashore on the private island;
- The Village's public service aides limit land access to the island;
- The Village relied on assessment recommendations of GSG that were clearly erroneous, arbitrary, or

without basis in reason, and were clearly unsupported by competent substantial evidence;

- No evidence in the record that "special" benefits were conferred on the Club's real property from the provision of general law enforcement that would justify the additional assessments; GSG did not perform any studies to determine whether the real property in the Village was specially benefitted from security service, i.e., increased property values, lowered insurance premiums, etc., and there was no available data that could quantify how, if at all, the services that are the subject of the special assessment impact the value of the Club.

The trial court concluded that it was not its job to approve or disapprove of the methodology that GSG used to formulate a recommended assessment value. The trial court did, however, determine that there was no record evidence (i.e., data) to support the 2010 and 2011 special assessments as against the Club, and thus invalidated the assessments as arbitrary.

[8] We agree with the trial court that both the 2010 and 2011 assessments were unsupported by competent substantial evidence and, therefore, are invalid. GSG considered several methodologies for evaluating how the special assessments could be calculated (traffic frequency over the bridge; land area/lot size; frontage measurements; "equivalent residential units" or ERUs). GSG ultimately used the ERU measure, which assigned 33.02 ERUs to the Club's golf course property—by assuming that land area was equal to 40 buildable residential lots, and thus a $25,510 assessment per buildable lot resulted in a special assessment for the Club's golf course of $842,340.00. GSG then used this numeric to recommend an assessment value to the Village, which then imposed that assessment on the Club. The problem is that golf course and tennis court land is not residential. GSG did not consider how the Club actually used its real property, or distinguished between the structure of the clubhouse versus tennis courts and golf course areas. GSG failed to consider the use of the golf course property and whether the Club would be benefitted by $842,324.00 worth of law enforcement security services. GSG failed to conduct studies to determine; (a) how the Club's golf course property benefits from the police department's services; (b) *236 whether or not a golf course requires the same level of security as do developed multimillion dollar residential homes; (c) the historical use of the Club's property or even that of any other property on the Island, and; (d) whether the Club, as the only non-residential property with an 18–hole golf course on the Island, actually requires the amount of manpower and services included in the special assessment, or whether a Club requires the only the type and level of "security" services already being funded.

The Village argues that there is evidence in the form of deposition testimony that the special assessments benefit the real property by; (i) increasing property values; (ii) preventing vandalism of and access to the island properties; (iii) enhancing the safety and enjoyment of real property; and, (iv) reducing insurance premiums. But GSG failed to provide any evidence that the assessments would have a measurable positive benefit to the Club's real property in any of these respects. There is no evidence in the record to show that any of the real property owners (residential or commercial) would get lower insurance premiums as a result of the Village providing general law enforcement to its residents' real property; there appears to be no evidence in the record of an increase in law enforcement capabilities and patrols as a result of the special assessment; there is no data to show that property values would increase as a benefit of the general law enforcement provided to the Village and Club. Here, the "security" services funded by the special assessment are not "similar" to law enforcement services: they are the same law enforcement services provided before and after the special assessment was passed. Even if a special assessment may constitute replacement funding for services previously funded by ad valorem taxation, those services must pass the special benefit and apportionment tests.

We therefore affirm the trial court's order finding both the 2010 and 2011 assessments are unsupported by competent substantial evidence and are thus invalid.

APPELLEE VILLAGE'S CROSS–APPEAL OF THE FINAL JUDGMENT REGARDING THE 2010 AND 2011 SPECIAL ASSESSMENTS.

The Village argues that there was indeed competent substantial evidence to support the special assessments, and that the trial court erred to find there was none. The Village argues that there was evidence—all in the form of witness testimony—of deterrence of vandalism, enhanced enjoyment of use of property, reduced insurance premiums, enhanced property values. Our review of the record did not disclose any data indicating that enhanced

property values or reduced insurance premiums would occur as a result, and the trial court was not convinced that "enhanced enjoyment of property" as a result of ordinary police services already being provided is a "special benefit to real property" that warranted the special assessments.

Regarding the methodology used by GSG to calculate the special assessments, we defer to the trial court's discretion. The trial court found the assessments were not fairly apportioned by whatever methodology the Village used. Because we conclude there was no competent substantial evidence of a logical relationship between the services provided and the benefit to the property, the Village's cross-appeal from the final judgment fails.

THE 2010 AMENDMENT TO SECTION 170.201 FLORIDA STATUTES (2011)

[9] [10] [11] [12] We review the trial court's conclusions of law on the issue of the single-subject rule and the 2011 amendment to ***237** section 170.201 de novo. As set forth in Lewis v. Leon Cnty., 73 So.3d 151, 153–54 (Fla. 2011):

> Although our review is de novo, statutes come clothed with a presumption of constitutionality and must be construed whenever possible to effect a constitutional outcome. "[S]hould any doubt exist that an act is in violation ... of any constitutional provision, the presumption is in favor of constitutionality. To overcome the presumption, the invalidity must appear beyond reasonable doubt, for it must be assumed the legislature intended to enact a valid law."

[13] [14] [15] Given the presumption of constitutionality and legislative validity, the single subject rule requires that, 1) the law embrace one subject, 2) the law may include any matter that is "properly connected" to the subject, and 3) the subject shall be briefly included in the title.[2] An amendment or provision is "properly connected" to the subject if the connection is natural or logical, or if there is a reasonable explanation for how the provision is necessary to the subject, or tends to make the purpose of the legislation more effective. Franklin v. State, 887 So.3d 1063, 1073 (Fla. 2004). The party challenging the validity of the legislation must prove invalidity *beyond a reasonable doubt*. Id. at 1073.

[16] We affirm the trial court's determination that the 2011 amendment to section 170.201 was constitutional. The trial court determined that the first prong of the 2011 special assessment was not supported by competent substantial evidence—there was nothing in the record to show that the Club's real property got any additional "special" benefit from the assessment's funding of Village security services. The Club argues that the trial court should not have gone further to rule that special benefit to the real property was established by the 2011 legislative amendment to section 170.201, and that the statute was constitutional because the amendment was related to government accountability. The Club asks this Court to find the 2011 legislative amendment to section 170.201 violated the single subject rule because it was unrelated to the subject matter of the bill, and was thus unconstitutional. If the amendment to the statute were unconstitutional, the Club argues, the trial court could not have found that the 2011 special assessment met the first prong of City of Boca's test (special benefit to real property) simply by virtue of being included in the legislation.

We understand the Appellant's arguments on this issue. The title and substance of the bill is not so unrelated, however, to the bill's overall nature to warrant reversing in what would in essence be a futile act—if the panel declares the amendment unconstitutional by finding the 2011 amendment violated the single subject rule, and as a result the first prong of the special assessments test (benefit to real property) was not met, the outcome remains the same: the 2011 assessment against the Club is still invalid because it did not meet either the first or the second prong of Boca's special assessment test, i.e., no special benefit to real property and unreasonable apportionment of the assessment against Club property. "When a single subject could not be easily determined, and when doubts arose as to whether the various provisions were connected to the ***238** subject this Court has consistently analyzed the act with every reasonable doubt in favor of validity. Franklin, 887 So.2d at 1075. We therefore affirm the trial court on this issue.

ORDER GRANTING THE VILLAGE'S MOTION FOR PARTIAL SUMMARY JUDGMENT INVALIDATING THE 1996 AGREEMENT BETWEEN THE TWO PARTIES

[17] The 1996 Agreement between the two parties contains language that limited the Village's ability to impose future assessments against the Club by limiting any future special assessments to the current ad valorem

tax rate: "The Club agrees to pay its share pro rata to its assessed valuation of any special tax assessment levied against all property in the Village." The Village argued that this tied its hands as to any future increase in assessments against the Club. In order to get around this, the Village challenged the validity of the Agreement itself by arguing that four of the Village Council members who voted in favor of the Agreement were also Club Members or were married to Club Members and thus had a vested interest in voting for the Agreement. The trial court agreed that this dual status created a conflict of interest, and those Council Members should have abstained from voting on the Agreement. The trial court based its conclusion following section 112.3143 (3), Florida Statutes (2013) which provides,

> (3)(a) No county, municipal, or other local public officer shall vote in an official capacity upon any measure which would inure to his or her special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, other than an agency as defined in s. 112.312(2); or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer. Such public officer shall, prior to the vote being taken, publicly state to the assembly the nature of the officer's interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes.

The trial court concluded that this statute controlled the actions of the Mayor and three Village Council Members who were also Club Members, and that the contract was voidable. [3]

What is considered a threshold "private gain or loss" is also set forth in section 112.3143(d)(1), (2), and (3), which provide:

> (d) "Special private gain or loss" means an economic benefit or harm that would inure to the officer, his or her relative, business associate, or principal, unless the measure affects a class that includes the officer, his or her relative, business associate, or principal, in which case, at least the following factors must be considered when determining whether a special private gain or loss exists:
>
> 1. The size of the class affected by the vote.
>
> 2. The nature of the interests involved.
>
> 3. The degree to which the interests of all members of the class are affected by the vote.
>
> 4. The degree to which the officer, his or her relative, business associate, or principal ***239** receives a greater benefit or harm when compared to other members of the class.
>
> The degree to which there is uncertainty at the time of the vote as to whether there would be any economic benefit or harm to the public officer, his or her relative, business associate, or principal and, if so, the nature or degree of the economic benefit or harm must also be considered.

§ 112.3143, Fla. Stat. (2013). The Club points out that, by these measures, any "interest" those voting Council Members had in approving the Agreement does not rise to the level of "special private gain or loss." The size of the Club Membership class at the time was around 291 persons; the nature of the interests involved were speculative, that is, there were no special assessments planned in 1996, and indeed none occurred until 2010; the degree to which the interests of all Club members may have been affected by the vote was not known until 2010, and then the Club would have to apportion that special assessment across all the Club membership, thus diluting any "special private gain or loss" to the four Club members who voted for the 1996 Agreement.

As the financial impact of the 1996 Agreement on the financial interests of the four voting Club members was speculative, we conclude that it was not a statutory voting ethics violation at the time of the execution of the Agreement, and therefore reverse the Partial Summary Judgment finding the 1996 Agreement voidable.

CONCLUSION

We affirm the Final Judgment regarding the 2010 and 2011 special assessments, and reverse the Partial Summary Judgment regarding the 1996 Agreement.

All Citations

211 So.3d 230, 42 Fla. L. Weekly D199

Footnotes

1 This includes the sum of the 2010 and 2011 assessments.

2 The short title of Chapter 170 is "An act relating to local government accountability." The floor amendment to the statute introduced a mechanism to allow small municipalities to find alternative methods to fund "special security and crime prevention services and facilities, including guard and gatehouse facilities" through special assessments. The bill was signed by the Governor in June 2011 and became effective October 1, 2011.

3 (1) Any contract that has been executed in violation of this part is voidable: (a) By any party to the contract. Fla. Stat. Ann. § 112.3175 (West).

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