

**From:** Leen, Craig  
**Sent:** Monday, July 28, 2014 3:55 PM  
**To:** Olazabal, Carmen; Birdsill, Cynthia  
**Cc:** Gomez, Diana  
**Subject:** FW: FPL Transmission Line Undergrounding

Carmen and Cindy,

Please see Heather's analysis below (Diana and I spoke with her today as well). She believes a special assessment district is possible here (I am still following up with her with additional legal questions). I agree with her recommendation that we should probably present to the Commission a general question asking whether the City should underground at the cost of approximately \$52 million (I will forward you the two draft resos we put together, updated for the increased amount). If the voters or the Commission decide to pursue the project, the City would need to hire an expert to determine the benefitted properties and amounts of any assessments that would be imposed.

Craig E. Leen  
City Attorney

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**From:** Encinosa, Heather [<mailto:hencinosa@ngn-tally.com>]  
**Sent:** Monday, July 28, 2014 2:25 PM  
**To:** Leen, Craig; Gomez, Diana  
**Subject:** FPL Transmission Line Undergrounding

Good afternoon, Craig and Diana. We have previously discussed the City's ability to fund the additional costs associated with undergrounding the new FPL transmission line through the imposition of a special assessment imposed on benefitted properties. While I am not familiar with any court opinions where the use of special assessments for undergrounding electrical transmission lines was challenged and upheld, the Florida Attorney General has opined that a non-charter county may levy special assessments on benefitted properties to fund the undergrounding of electrical transmission lines when the lines are not owned, operated, or franchised by the local government. See Op. Att'y Gen. Fla. 2001-82. Additionally, Section 170.01, Florida Statutes, authorizes municipalities to levying special assessments to "pay for the relocation of utilities, including the placement underground of electrical, telephone, and cable television services, pursuant to voluntary agreement with the utility." See sec. 170.01(1)(d), Fla. Stat. Given these authorities, along with the wealth of case law authorizing special assessments for analogous purposes, the costs related to undergrounding a transmission line could likely be funded at least in part by a special assessment imposed on benefitted property owners.

At this point, however, there are two unknowns with regard to such a program: (1) what property owners would be benefited by this project? and (2) how would the costs be apportioned to the benefit area? To answer these questions, the City would need to engage an expert to perform a study, much like it did for the Miracle Mile project. Such a study would determine the type of benefits that would accrue to property from the project, which would likely include aesthetics, safety, and reliability and would determine what the benefit area is for these benefits. It would then propose a fair and reasonable method of apportioning the project costs among the benefited properties. That method may be front footage, value, building/parcel area, usage, or any other reasonable factor, or combination thereof. Such a study would likely be a fairly complicated endeavor and would accordingly take time to complete.

At this time, I understand the City is exploring a straw ballot for the November general election ballot regarding the undergrounding project. Without the benefit of the time necessary to engage an expert and complete the study, I don't think it would be possible to have actual assessment rates ready for the ballot. Additionally, the general election ballot would have all voters (not necessarily property owners) voting on whether a (likely) smaller group of property owners should pay a special assessment. Such an approach may seem inequitable, even though the ballot itself is not binding. Instead a more general referendum question could be formulated to gauge the voters' general desire to have the city spend roughly \$52 million to have 2.2 miles of transmission lines placed underground. If the city pursues this project and desires to ballot the actual property owners who would be impacted by a special assessment program, in the future, you could always conduct a mailed ballot of this smaller group of benefited property owners that contains the actual assessment rates.

Please let me know if you have any additional questions.

**Heather J. Encinosa, Esq.**



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