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PERSSON, COHEN & MOONEY, P.A.

ATTORNEYS AND COUNSELORS AT LAW

David P. Persson ^{**}		
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Q	County and Local Government Law	Reply to: Lakewood Ranch
TO:	Chairman Bracco and Venetian Community Developmer Board of Supervisors	nt District
FROM:	Andrew Cohen	
REPORT DATE:	July 24, 2020	
SUBJECT:	Pickleball/Dog Park - FPL Right of Way Consent Agreen	nent

Before the last CDD meeting on July 13, 2020, a resident and retired attorney (Anthony J. Pirotti, Esq.) sent a July 8, 2020 e-mail raising a number of questions regarding the FPL Right of Way Consent Agreement ("Agreement") previously approved by the Board of Supervisors on April 27, 2020. I understand Mr. Pirotti raised similar issues during public comment at the July 13, 2020 meeting and I have reviewed the draft minutes from that meeting. The Board asked that our office please generate a memo responding to the individual issues raised by Mr. Pirotti in his e-mail. Please recall that the Agreement is a significant document and rather than have it routinely executed, the document was brought before the Board and discussed at length. I agree that the Agreement has some provisions that I would have liked to see revised but FPL was very loathe to make changes and we negotiated what we felt we could at the time (I am glad to go back and try for additional revisions if the Board so chooses). I explained the pitfalls to the Board and the Board made a reasoned decision to move forward.

1. The CDD may not act as a Licensee: First, I would point out that the land in question is CDD property and FPL was only historically granted an easement over the lands. The CDD still retains ownership of the subject property. Previously, the CDD was granted special powers by the City of Venice pursuant to Section 190.012, Fla. Stat., for "parks and facilities for indoor and outdoor recreational, cultural, and educational uses." Therefore, the CDD has recreational powers to construct the dog park and pickle ball courts. While Chapter 190 may not specifically refer to this

Lakewood Ranch 6853 Energy Court Lakewood Ranch, Florida 34240 Venice 236 Pedro Street Venice, Florida 34285 exact issue of a CDD being a licensee of FPL, there are multiple references in Section 190.011, Fla. Stat., (general powers of a CDD) referring to the ability to hold, control, acquire and lease property interests. Moreover, Section 190.011(15), Fla. Stat., provides a CDD the general power to "exercise all of the powers necessary, convenient, incidental, or proper in connection with any of the powers, duties, or purposes authorized by this act." Executing the Agreement as a Licensee is "necessary" for executing the CDD's previously granted special recreational powers if it chooses to provide for construction of the recreational areas at this particular site.

- 2. Overhead Lighting: This is not a legal issue (if the lighting is installed within the height and other parameters of the Agreement) but a policy decision of the Board. To my recollection, the Board previously decided not to install lights at this time but to provide the necessary conduit should a future decision be made to proceed with installation.
- 3. Assignment: I do not believe there are any intentions for the CDD to assign its rights. Should the CDD express such an intention in the future, we can examine whether it has the legal right to do so.
- 4. Liability from High Voltage Wires: This issue has been discussed in the past and the Board made the policy decision to proceed forward. While the CDD does provide indemnity to FPL in the Agreement (an issue from my notes that was discussed with the Board at its April meeting), I worked with FPL and their representatives to insert multiple provisions into the Agreement referencing the CDD's sovereign immunity protections. We even passed the insurance language by the CDD's insurer and negotiated language that would be acceptable to both the CDD's insurer and FPL.
- 5. Termination of the Right of Way Agreement: I agree with Mr. Pirotti that this is a significant provision in that FPL could terminate the Agreement for default or otherwise. I specifically pointed this out to the Board at the April meeting together with the fact that FPL can make us relocate, alter or remove facilities with 30 days' notice at the CDD's sole cost but the policy decision was made to move forward based on the conversation among the Board that the foregoing risks were minimal and the site was one of few available in the community for the contemplated amenities.

As always, please let me know if we can assist further. I am glad to discuss any of the above issues or related concerns with the Board at a meeting or any individual Supervisor separately.

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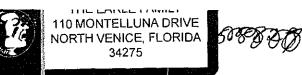
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8 Cherry Miller	161 Pesaro Drive	
9 LABRY DEKSON	164 PESLEO, DAVE	Alan
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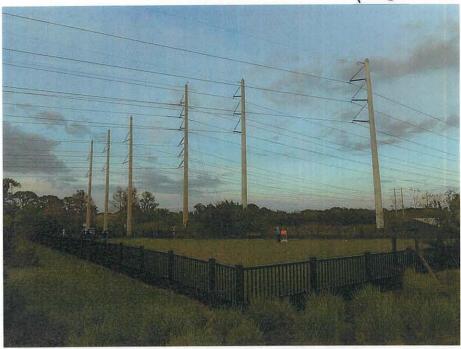
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3 Louis Ortiberi	133 Bella Vista A.	Pauis & Tiberi
4 Joan Ring	206A Bella Vista	Jackty
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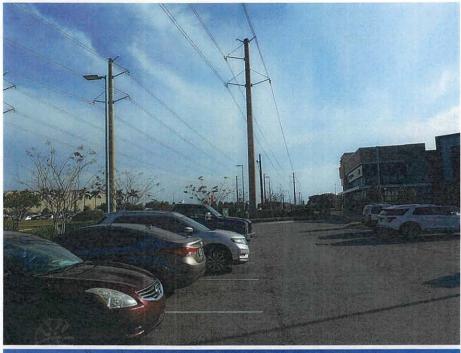
Milano Dog Park – Power Lines 3604 53rd Ave. East - Bradenton, Florida 34203; Phone: (941) 251-7613



OF SCHAPPACHER ENGINEERING, LLC









UTC Mall – Power Line & Parking Lots – Page 1 3604 53rd Ave. East - Bradenton, Florida 34203; Phone: (941) 251-7613





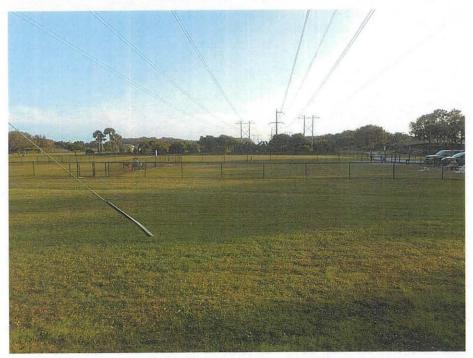




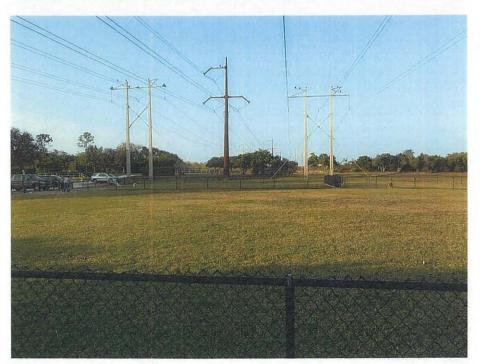


UTC Mall – Power Line & Parking Lots – Page 2 3604 53rd Ave. East - Bradenton, Florida 34203; Phone: (941) 251-7613 SCHAPPACHER ENGINEERING, LLC









Heritage Harbour Dog Park – Power Lines 3604 53rd Ave. East – Bradenton, Florida 34203; Phone: (941) 251-7613