

From: [Michael Jenkins](#)
To: [Eduardo Sarmiento](#); [Ann Yang](#)
Subject: FW: Hermosa Beach-Greenwich Undergrouding District
Date: Monday, October 12, 2020 6:05:37 PM

My response.

From: Michael Jenkins <Michael.Jenkins@bbklaw.com>
Sent: Monday, October 12, 2020 5:58 PM
To: 'Stephen Goldberg' <stephen.goldberg@practicallawyer.com>
Cc: bambamx33@aol.com
Subject: RE: Hermosa Beach-Greenwich Undergrouding District

Below are responses to your questions:

- **What Notice, if any does the City believe it gave to the affected residents?**

The Greenwich Village Underground Association (GVUA) is a neighborhood organization formed by property owners within the Greenwich Village neighborhood boundaries with the goal of forming an assessment district.

It is entirely up to the proponents to not only gather support, but provide the documentation necessary to move forward, which includes coordination with residents in the proposed district. Until the assessment notices and ballots are mailed to the property owners, information dissemination related to the district primarily comes from the proponents (the property owners who initiated the process with the City and operate as liaisons for the district). According to the proponents, for the past 5+ years they have engaged with property owners both within the neighborhood as well as those who may live elsewhere, and made numerous attempts to get petitions signed by property owners in the district.

The City Council considered and took action on various stages of the assessment district at public City Council meetings on the following dates: November 27, 2018, July 23, 2019, and August 11, 2020. For the July 23, 2019 public meeting, it was the responsibility of the proponents to demonstrate support to the City Council to move forward to the next stage in the process. Therefore, it is not a question of what notice the City provided to residents because the proponents were coming to the City asking the City Council to adopt a Resolution of Intention declaring its intention to order described improvements, specifying boundaries of the proposed assessment district, providing for the issuance of bonds, declaring its intention to levy an assessment, and directing the assessment engineer to make and file the Preliminary Engineer's Report. Once this process was completed and the Preliminary Engineer's Report was prepared, then the City Council set a public hearing for which notice was required.

The City mailed a combined notice and ballot to all property owners of record on August 14th, 2020. The provided notice gave more notice than the 45 days required by law. These notices/ballots informed the property owners of the balloting process, their assessment amounts, and all other legally required information. The City also held a public information meeting for

residents in the proposed district on September 10, 2020, and the video of that meeting can be found on the City's website.

- **Did the City of Hermosa Beach staff evaluate and approve the Engineer's Report? If so, any comments, notes or related material?**

The Engineer's Report is a document required under Article XIII D of the California Constitution. The purpose of the report is to support all assessments to be imposed if the district is successfully formed. The report must be prepared by a registered professional engineer certified by the State of California. For the Greenwich Village North UUAD, the City appointed an outside engineer, Jeff Cooper from NV5, with 30+ years of experience in assessment engineering to complete this report.

Although staff may have provided comments on the contingency and cost estimate related to City time expended on the assessment district and the outside bond counsel and financial adviser may have provided input on the Engineer's Report within their areas of expertise, the conclusions in the report are the assessment engineer's professional opinion. The assessment calculation is based on industry standards that Mr. Cooper has used in numerous other assessment districts. Mr. Cooper has explained the basis for his professional opinion in the Preliminary Engineer's report, the City's FAQs, at the September 10, 2020 public information meeting, and at one-on-one meetings with residents.

- **Did the City of Hermosa Beach give any instructions to the Engineering firm that prepared the Engineer's Report?**

The scope of work for the assessment engineer includes the following instruction on the preliminary engineer's report deliverable:

- I. Prepare Preliminary Engineer's Report, which will include the following:
 - a. 1931 Act information and tables
 - b. Plans and specifications (by reference)
 - c. Description of works of improvement
 - d. Preliminary and Final estimate of costs with and without ITCC (Income Tax Component of Contribution)
 - e. Assessment diagram
 - f. Method of assessment spread
 - g. Assessment roll with preliminary assessments
 - h. Right-of-Way assessment if necessary
 - i. Certification of Completion (executed by Director of Public Works)

- **What, if any, criteria were given by the City to the Engineering firm prior to the Engineer's report?**

None. The assessment engineer is hired to provide his professional opinion on the assessment calculation, as required by law. He is an expert on the criteria used in formulating the assessment calculation. The City relies upon the assessment engineer for his expertise.

- **If the signatures were not actually required, why did the Engineer "certify" that the**

signatures were sufficient? How did he reach this conclusion?

The City's Underground Utilities Assessment Districts Guide (Initiated by Property Owners) (Last revised July 2019) (the "Guidelines") are a roadmap for the process and have periodic benchmarks to determine continued support from residents in the proposed assessment district. At Step 5 in the Guidelines, the retained assessment engineer is to certify that 60% of the property owners in the proposed district support the formation of the district. Mr. Cooper checked the documentation of support from residents in the proposed assessment district and had supporting documentation from 60% of the property owners. Recently, some residents have expressed concerns that when the City Council adopted the Resolution of Intention in July 2019, that the level of resident support presented to the City Council did not meet the minimum 60% set out in the City's Guidelines. While there was adequate support presented to the City at that time to warrant moving forward to the next step in the process, staff has gone back and reviewed the files in response to concerns raised by the residents. Accordingly, even if all questionable petitions are removed from the calculation, the supplemental certificate of sufficiency attached to the October 13, 2020 meeting agenda demonstrates that the City had received the appropriate level of support needed at that time.

- **How were the boundaries of the District formed, and why were several residences that benefit from improved views not included in the Assessment District?**

The assessment district boundaries were selected by the proponents of the district. They were then submitted and verified by the City to make sure they did not conflict with the City's ongoing projects. The boundaries were then submitted to Southern California Edison to make sure the boundaries were feasible with infrastructure. The assessment engineer then reviewed the boundaries and created a final boundary map. Ultimately, the assessment district boundaries are proponent driven.

- **Was the assumption that Robert Greenberg was going to deal with undergrounding the poles and utility wires at the North End of Hermosa Beach a factor in the determination of where the lines would be drawn? Does Mr. Greenberg still intend to do this, since it appears that he is selling his house? If not, should the lines be re-drawn?**

The two poles at the north end of Hermosa Avenue were excluded from the district because a resident in that area initiated a separate process with Southern California Edison to underground those poles privately. Adding parcels to the district at this point would require abandoning these proceedings and starting the process over.

- **How were the assessment criteria determined? What were the criteria that the Engineer used to evaluate the weight of each component of the assessment, (referring to Safety, Reliability and Aesthetics). Were there any advisors or statistics used to evaluate these factors?**

To the extent the answer is not provided in the video of the public meeting or the FAQs, Mr. Cooper will be available at the public hearing to answer any remaining questions.

- **Will the six residents who are given a reduction of 1/2 of their assessment because of a guy wire and small pole at the side of their homes have their voting weight also reduced by half?**

To the extent the answer is not provided in the video of the public meeting or the FAQs, Mr. Cooper will be available at the public hearing to answer these questions.

- **If Frontier is being benefited, shouldn't it contribute? Is it paying anything to the City.**

Only the property owners are deemed to receive a special benefit from undergrounding utilities. The utilities themselves are not subject to assessment under the applicable law.

As it relates to your final comments on adjustments to the district, the assessment district is proposed by the resident proponents. The City did not dictate which properties are included as the proponents get to propose the boundaries of the district; it is not a City initiated process. The proponents may have selected boundaries that they thought would be successful which, is their choice. To the extent you have questions about the process, the FAQs, the public information video, and the above answers should address those questions.

The ballots will be opened at the October 13, 2020 meeting and tabulated. I suppose it is possible that after the tabulation, the Council could defer making a final decision on whether to confirm the district and levy the assessment to a later date. If there is majority support and your clients wish to delay the creation of the district, they should ask for that during their public comments to the City Council. Any changes to the district could be discussed following the delay but may require abandoning these proceedings and starting the process over.

Michael Jenkins



[Michael Jenkins](#)

Of Counsel

Michael.Jenkins@bbklaw.com

T: (310) 220-2174

www.BBKlaw.com

Stay at home and public health orders issued in multiple counties across the U.S. require our offices to be physically closed. Because all staff are working remotely, all documents (including correspondence, pleadings, and discovery) will be served via e-mail until further notice. Because we may not receive regular mail or other deliveries during this period of time, please e-mail copies of anything you send by regular mail or delivery. Send all e-served documents in your case to the e-mail addresses for any Best Best & Krieger LLP attorney who has appeared in your case, or who has communicated with you by e-mail on your matter.

From: Stephen Goldberg <stephen.goldberg@practicallawyer.com>

Sent: Friday, October 9, 2020 1:08 PM

To: Michael Jenkins <Michael.Jenkins@bbklaw.com>

Cc: bambamx33@aol.com; Stephen Goldberg <stephen.goldberg@practicallawyer.com>

Subject: Hermosa Beach-Greenwich Undergrounding District

CAUTION - EXTERNAL SENDER.

Michael:

I have been asked by a number of Hermosa Beach residents to reach out to you regarding the pending action/vote re: undergrounding utilities in what has been referred to as the “North Greenwich Village Undergrounding District”.

In general, these residents are concerned about the process (or lack thereof) which appears to be heading toward a vote by ballot which expires next week. The biggest concern has to do with the fact that they never received any sort of Notice that this was happening prior to the City Council vote and mailing of the ballots, and were then given a relatively short period of time in which to try to understand what is going on. By the time people had any real information to enable them to engage in meaningful discussion, many people had already voted, and further, the COVID-19 pandemic has made it particularly difficult to gather neighbors together.

From what they have been able to ascertain, a small group of residents have spent the past several years trying to get signatures evidencing interest in possible undergrounding, based on some guidelines which require the signatures of over 60% of the affected residents. The signatures were submitted to the City, even though a large number of them were not valid. When this was called to the City’s attention, the City’s response was that it was not following the guidelines but rather, a 1913 statute that does not require any signatures.

It seems to my clients that a significant number of steps were taken during a time when many of the neighbors were completely unaware of any process whatsoever. Engineers were hired, bids reviewed, allocations made and final decisions (subject only to a mail in ballot with virtually no information included) made with no input from most of the affected parties.

A number of questions remain, including:

- What Notice, if any does the City believe it gave to the affected residents?
- Did the City of Hermosa Beach staff evaluate and approve the Engineer’s Report? If so, any comments, notes or related material?
 - Did the City of Hermosa Beach give any instructions to the Engineering firm that prepared the Engineer's Report?
 - What, if any, criteria were given by the City to the Engineering firm prior to the Engineer’s report?
 - If the signatures were not actually required, why did the Engineer “certify” that the signatures were sufficient? How did he reach this conclusion?
 - How were the boundaries of the District formed, and why were several residences that benefit from improved views not included in the Assessment District?
 - Was the assumption that Robert Greenberg was going to deal with undergrounding the poles and utility wires at the North End of Hermosa Beach a factor in the determination of where the lines would be drawn? Does Mr. Greenberg still intend to do this, since it appears that

he is selling his house? If not, should the lines be re-drawn?

- How were the assessment criteria determined? What were the criteria that the Engineer used to evaluate the weight of each component of the assessment, (referring to Safety, Reliability and Aesthetics). Were there any advisors or statistics used to evaluate these factors?
- Will the six residents who are given a reduction of 1/2 of their assessment because of a guy wire and small pole at the side of their homes have their voting weight also reduced by half?
- If Frontier is being benefited, shouldn't it contribute? Is it paying anything to the City.

From my clients' review of the available information, it seems like there are some adjustments that can and should be made. For example, it appears that for some aspects of the project, we are actually paying *substantially more* than what is being paid just a few yards away in Manhattan Beach even though the Manhattan project has more impediments. Further, it appears that there may have been some gerrymandering of the "District" as 1) it does not match the City's own "Utility Undergrounding Districts" map; and 2) there are a number of impacted properties that appear to be outside the District.

My clients would be very interested in having a dialogue about these issues, and trying to sort out some of the apparent inconsistencies. I would appreciate your thoughts on this, both substantively and procedurally, to see what we can do to accomplish the best and fairest result. I have attached a Petition signed by the owners of approximately 40% of the affected Strand owners seeking a brief delay in the proceedings to allow for further discussion. Of the remaining 60%, only one or two owners declined to support the request for the delay, and the others were unable to be reached.

I would appreciate hearing from you at your earliest convenience.

Sincerely,

--

Stephen B. Goldberg

Stephen B. Goldberg



SPIERER | WOODWARD | CORBALIS | GOLDBERG

Attorneys at Law

A Professional Corporation

707 Torrance Boulevard, Suite 200

Redondo Beach, CA 90277

Phone (310) 540-3199

Fax (310) 316-1823

<http://www.practicallawyer.com>

This email and any files or attachments transmitted with it may contain privileged or otherwise confidential information. If you are not the intended recipient, or believe that you may have received this communication in error, please advise the sender via reply email and immediately delete the email you received.