

From: [Kelly Fernandez](#)
To: [Lori Stelzer](#); [Danielle Lewis](#)
Cc: [Jeff Shrum](#); [Roger Clark](#); [Kathleen Weeden](#)
Subject: Fw: Revised / Combined Stipulations for Ord 2019-26/ Murphy Oaks
Date: Monday, September 23, 2019 11:04:26 AM
Attachments: [Narrative Development Standards to Remain.docx](#)
[9-20-19 - Ordinance Section 3 Stipulations .docx](#)

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Please add this e-mail and the attachments to the agenda for Murphy Oaks.

Kelly M. Fernandez, Esq.
Persson, Cohen & Mooney, P.A.
236 Pedro St.
Venice, FL 34285
Ph: (941) 306-4730 | Fax: (941) 306-4832
Board Certified by the Florida Bar in City, County and Local Government Law

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From: Robert Lincoln <robert.lincoln@flalandlaw.com>
Sent: Friday, September 20, 2019 7:46 PM
To: Kelly Fernandez <kfernandez@swflgovlaw.com>
Cc: John Holic <JHolic@Venicegov.com>; Jeffery A. Boone <JBoone@boone-law.com>; Annette Boone <Annette.Boone@boone-law.com>; herb@windhamgroupllc.com <herb@windhamgroupllc.com>; Joshua Gadowski <Joshua@windhamdevelopment.com>; Danielle Lewis <DLewis@Venicegov.com>; Stacy Dillard-Spahn <stacy.dillard@flalandlaw.com>
Subject: Revised / Combined Stipulations for Ord 2019-26/ Murphy Oaks

Dear Kelly:

Consistent with our conversation yesterday, I am sending the draft of the revised/combined stipulations for the City Council's continued hearing on Ordinance 2019-26. Earlier today, Clint Cuffle sent Jeff Schrum and Roger Clark revised versions of the Binding Concept Plan and Landscape Plan that implement the reduction in lots from 105 to 85. They are for reference and later

incorporation into the ordinance at second reading.

I took the Council's intent (after Mr. Boone's request) as direction to gather all of the items from the Narrative, Developer's Agreement and plans that were appropriate stipulations into a single document that could be included in the ordinance, as well as to confer with Mr. Boone to attempt to reach agreement on the stipulations. I have done both, and while negotiations are ongoing, I wanted to provide the City Council with a working draft to review.

The attached document (which could be referenced in Section 3 and attached as Exhibit A to the Ordinance reflects my best understanding (as of today) of the current state. The first part of the document sets out stipulations that Windham is willing to accept. I have included bracketed notes (that would not go into the ordinance) after each to identify the origin of the stipulation.

Windham has revised or added a number of the stipulations to address concerns Fox Lea raised at the August 28 hearing, or in subsequent communications, including:

- Stipulation 7 – Fox Lea Drive buffer – revised to include language requested by Fox Lea that the Developer or assigns maintain the berm, buffer and wall in perpetuity.
- Stipulation 10 – chipper/no burning - revised to add clarifying language and a location exhibit as requested by Fox Lea.
- Stipulation 11 – added to address Fox Lea concern about timing of the berm construction, to require berm and wall will be constructed after clearing, and only land development/ site work necessary or directly related to construction of the berm will be done until the berm and wall are complete.
- Stipulation 12 – added to address Fox Lea concerns about construction traffic on Fox Lea Drive, prohibits construction access from Fox Lea Drive.
- Stipulation 13 – added to address Fox Lea concerns about construction traffic and other activities in Fox Lea Drive right-of-way -- Windham agrees to support any application by Fox Lea Farm to vacate Fox Lea Drive, and to give up all the right-of-way to Fox Lea.
- Stipulation 14 – monitoring –revised to include language and concepts from Fox Lea's engineers; Fox Lea wants further revisions but has not yet provided.
- Stipulation 15 – inspection – revised to allow Fox Lea to name an officer or employee to be an inspector; Fox Lea wants some additional flexibility but has not provided language;
- Stipulation 17/18 - Developer's Agreement and Notice of Proximity – Windham has accepted Fox Lea amendments to include and cover renters.

However, Windham and Fox Lea have not come to agreement on all of the terms, as reflected in the last section of the document. There are three categories of outstanding issues:

1. Windham has provided a stipulation to address a demand by Fox Lea, and Fox Lea wants revised language it has not yet provided. It is possible there will be agreement prior to the Council hearing on some or all of these issues, which include:
 - Stipulation 14 governing the ground water monitoring plan, where Fox Lea's engineer is to provide a markup and additional terms;
 - Stipulation 15, governing inspection, where Fox Lea wants to be able to name as an inspector someone other than an employee or officer, but not a licensed contractor or engineer, and has not yet provided language; and
 - Stipulation 16, governing notice and coordination, where Fox Lea has some revised or additional terms but has not provided language.
2. Windham has provided a stipulation to address a demand by Fox Lea, but cannot agree to everything Fox Lea wants. This category includes:
 - Stipulation 11 regarding the timing of the berm construction.
Windham is willing to construct the berm and wall before other site work other than clearing and activities necessary for building the berm, but Fox Lea wants its Stipulation 5 [new September 13th], forcing Windham to install an undefined "visual screen" along the entire south property line, and then install the berm and wall without doing any site work outside the immediate area of the berm.
3. Windham cannot not agree to a stipulation Fox Lea has demanded. This category includes:
 - Fox Lea Stipulation 1 – no pools on south lots. {New August 23}
 - Fox Lea Stipulation 2 - remove Lots 33-52 on revised site plan and have no lots south of the internal roadway [New September 13/18].
 - Fox Lea Stipulation 3 – move the south pond further north [New September 18th].
 - Fox Lea Stipulation 4 – move the berm and wall further north. [New September 18].
 - Fox Lea Stipulation 7- Windham must provide a bond in favor of Fox Lea to guarantee performance of the monitoring system. [Verbally mention September 12; demanded September 18th].

I also attached a separate document "Narrative Development Standards to Remain" – these are the development standards that are included in the Narrative and that Jeff Boone and I agreed were enforceable as PUD standards, and did not need to be in the stipulations. Stipulations 4, 5, 6 and 7 might remain in the narrative and not the ordinance, but include matters that are particularly important to Fox Lea Farms.

I will be trying to get with Mr. Boone on Monday to see if we can come to agreement on some of the outstanding issues prior to the hearing.

Best regards,
Robert



Robert K Lincoln
Board Certified in City, County and Local Government Law
LAW OFFICE OF ROBERT K. LINCOLN, P.A.
2055 Wood Street, Suite 206 | Sarasota, FL 34237
941-681-8700 941-363-7930 (f) Robert.Lincoln@flalandlaw.com

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