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November 18, 2015

Casey Colburn, Esq.  
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PO Box 21723  
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**Re: Preserves of Venice/Fox Lea Farms**

Dear Casey:

Thank you for your ongoing interest in the proposed Preserves of Venice residential subdivision, and for meeting with us on October 8 to discuss the concerns of your client, Fox Lea Farms. We will attempt herein to address the issues you raised and the requests you articulated in your letter of August 28, as augmented and clarified in your letter of October 16. To the extent our responses are positive, i.e. items 1, 2, 3, 8 and 10, they are offered only as elements of an overall resolution of issues, one that would result in your client giving full support to our development plans. They are not necessarily available as *ala carte* offerings.

1. **Vegetated Buffer.** You have requested that we create a minimum 300-foot undisturbed vegetated buffer adjacent to the north edge of Fox Lea Drive. Based on the scale shown in the lower right hand corner of the site plan, the setback you request would result in the uncompensated taking of 45 of our lots (Lot numbers 26-53 and 89-105) and the lift station site. Given that we are only proposing 118 lots, we would thereby forfeit 38 percent of the units. Few developers could sustain such a severe taking. The minimum setback along Fox Lea Drive, per the zoning code, is only 10 feet. Yet, because we are sensitive to your client's concerns, we are proposing to increase it to 40 feet, a result we can only achieve at some sacrifice by making the lots smaller. This assumes that the City Council will approve the smaller lot sizes we propose. If not, we will have to revert back to the 10-foot buffer.

2. **Notice of Proximity.** If we can count on your client's support, we will be amenable to recording a notice of proximity, though we will have to work out its precise terms. For example, it would be misleading to describe Fox Lea Farms as a mere "agricultural" use, as you suggest. The horse farm property was rezoned to the OUR district in 1983 for use as an equestrian stable and riding academy. Those uses were, and still are, permitted as a matter of right in the OUR district. But your client's website bears witness to the fact that, over the

years, the operation has incrementally grown in scope, intensity and scale to become so much more than a mere equestrian stable and riding academy. The business is now a commercial tourist attraction, conducting national horse show events, charging admission fees to spectators, selling jewelry, artwork, photography, clothing (equestrian and non-equestrian), food, and providing other concessions, camping, golf cart rentals, camping for the entertainment of overnight or daily visitors, etc., more on the scale of a public fair or exposition. These enhanced uses would be more accurately described as "commercial outdoor recreation", a broad umbrella that encompasses the subsidiary uses of NAICS 71399 (amusement and recreation industries), NAICS 7212 (recreational vehicle), NAICS 7112 (spectator sports) and/or NAICS 1131 (promoters of performing arts, sports, and similar events with facilities). Some of these augmented uses may be permitted as a matter of right under the current zoning code; others may be grandfathered; others may not be compliant at all. We would need to sift through these issues and make full and accurate disclosure of the uses, and their legal status, in any notice of proximity. Incidentally, your clients may have no interest, but if their property should ever be annexed into the City, per the City's comprehensive plan, equestrian uses would still be allowed on their property, so long as they are deemed compatible with adjacent uses.

**3. Prohibition on Fireworks.** If we can count on your client's support, we will be amenable to a general ban on fireworks, subject to working out the precise terms.

**4. No Burning.** We have determined that trash or waste materials may be burned within the City if a written permit for such burning is first obtained from the chief of the city fire department. We are not prepared to give up this option, but would scrupulously observe any permit conditions dealing with smoke management.

**5. No Swimming Pools within 1,200 Feet of Competition Space.** This restriction would affect 57 of the 118 lots--fully 48 percent of them. We cannot accede to this request. We anticipate that the noises from motorists, especially large trucks, on the adjacent interstate highway, blended with the sounds generated by your client's commercial recreational use will likely mask the occasional and happy sounds of a few children splashing in pools.

**6. No Multi-story Homes in South End.** Unfortunately, the reduction in the width and area of the typical lot, to make possible the additional setback on the south, will increase the need for some homebuyers to build a second story. You have not identified the specific lots you are asking us to restrict, but that is not necessary, as we cannot handicap our future residents by imposing a single-story restriction on any of the lots.

**7. Noise Barrier.** You have called to our attention a low-cost product called *Acoustifence* for use as a sound barrier. We believe, however, that the 40-foot landscape buffer will be adequate to mitigate sounds emanating from the subdivision or from the horse shows.

Casey Colburn, Esq.

November 18, 2015

Page 3

8. **No Access to Fox Lea Dr./Agree to Vacate.** You will note that our site plan proposes no access to Fox Lea Drive. If the City Council approves the plan, we will have no access to Fox Lea Drive. In that event, assuming your client's support of our development, we will in turn support your client's request to vacate the right-of-way if they are willing to bear the expense of securing it. If they are successful in the vacation, we would be willing to grant an easement to your clients, covering the north half of the vacated right-of-way, provided compensation is paid for it. Alternatively, we would be willing to sell the north half of the right-of-way for fair market value.

9. **Limit Access to Auburn Road to Emergencies Only.** You will note from our site plan that we are proposing two full-functioning entrances, one on Auburn; the other on Border. We believe good planning demands this. To limit us to a single access on Border would make it necessary for residents approaching the development from the south to traverse the Auburn/Border intersection, unnecessarily increasing the number of trips and turning movements within that junction.

10. **No Sidewalk on Fox Lea Dr.** We are in agreement that no sidewalk is desired along Fox Lea Drive, and, in fact, our plan proposes none. If, however, the City Council is not willing to waive the sidewalk requirement (which is unlikely), we will have to build it.

11. **Assignment of Purchase Contract.** You advise that some of the horse show participants, or their family members, have the financial wherewithal to purchase the 40-acres presently proposed for our residential development; and you have asked that we let you know whether that might be a possibility. Unfortunately, my client has already invested too much energy and resources into the planning for this development to sell the land. We hope you understand.

In closing, let me say that we welcome your ongoing input and want to keep the lines of communication open. Feel free to call me anytime.

Sincerely,

A handwritten signature in blue ink that reads "Dan Bailey". The signature is stylized with a cursive script.

Charles D. (Dan) Bailey, Jr.  
For the Firm

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