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By Email & Hand Delivery to Commissioners via their government mail boxes

TO: Board of County Commissioners

Cc: Craig Coffey, County Administrator; Sally Sherman, Deputy County Administrator and Growth Management Director; Adam Mengel, Planning Director; Julie Murphy, Public Information Officer

Cc to Counsel: Sidney F. Ansbacher, Christene Ertl, and Dennis K. Bayer

FROM: Al Hadeed, County Attorney

DATE: November 17, 2017

RE: Continuance of Quasi-Judicial Items 9e to 9n for upcoming November 20, 2017, at Regular Meeting concerning land use items for Los Lagos and Las Casitas in the Matanzas Shores Area located along North A1A

Members of the Board:

I received a written communication from the three attorneys representing the parties who have standing under the quasi-judicial legal precedents for the above agenda items. Specifically, we have received such communication from Mr. Sid Ansbacher representing the applicant, Ms. Christene Ertl representing the Lakeside HOA, and Mr. Dennis Bayer representing a group of homeowners from the adjoining Lakeside neighborhoods. All plan to present testimony and expert witnesses whenever the hearings are convened.

They have jointly requested a postponement of the upcoming November 20 hearings to the next scheduled Commission meeting of December 4, 2017. Due to the requirements of constitutional due process as articulated by the courts of our state and the particular facts and complexities of these land use agenda items, I have determined that for the Commission not to grant the continuance could be asserted as a due process violation by one or more of these parties. However, our standard operating procedure is to conduct land use hearings at our evening meetings in order to allow the widest public participation possible, particularly for those who work during the day. Therefore, for this limited purpose, I am determining as your counsel that we cannot proceed with the hearings this coming Monday. I will so instruct you at open session on Monday and will ask County Administration to add this memorandum to the start of the agenda backup materials for these items. This allows you to vote on the record and determine to adopt this postponement with a continuation to the time certain of December 18. (This also confirms for the record, Commissioners, for the purpose of the Sunshine Law and quasi-judicial principles that I have not discussed this determination or any aspect of it with any of you in advance of its drafting.)

Charles Ericksen, Jr.
District 1

Greg Hansen
District 2

David Sullivan
District 3

Nate McLaughlin
District 4

Donald O'Brien Jr.
District 5

Because of this determination to postpone to a time certain, and given the public interest in the agenda items, I believe that for fairness, not just to the three parties, but for any potential participant, we need to give the widest notice of this postponement action. We cannot wait until Monday evening because that delay may cause hardships and new issues that would be avoidable now with an announcement rather than waiting until the start of Monday's meeting.

I am accordingly advising County Administration to notify individuals and groups with an interest in these agenda items of the postponement to December 18, 2017, as well as the general public, by all reasonable available means. This will relieve persons from having to unnecessarily prepare presentations or engage in other activities they had anticipated for Monday evening. The same applies to the counsel in order that they do not have to incur unnecessary expenses or other burdens for their clients in preparing for Monday's hearings. Unless I determine this postponement as a matter of law now, their duty to their clients would compel them to prepare for Monday's hearings without otherwise having the certainty of the postponement.

I recognize that some may view this determination as extraordinary, and in some sense that is true. Accordingly, for the record and for transparency's sake, I wish to point out that the three parties have judicial standing that we must respect. The law deems them "parties" in the formal sense for these quasi-judicial land use proceedings. As such, they occupy a unique status. The applicant represented by Mr. Ansbacher has the absolute right under the law to petition for a land use determination as his clients are doing so today. He has the absolute right to press for proceedings that are fair under due process and are compliant with our land development code and comprehensive plan. This means he can present experts in support of his position and cross-examine other experts presented by other parties, as well as cross-examine any witnesses at the hearing. He can cross-examine our staff. He has the further right to go first among all parties and other participants and the right to be the last party to present argument in final closing.

The other parties have the right to present competing evidence to prove their cases, including the ability to use experts and cross-examine all other witnesses and experts, and our staff too.

Regardless of who is presenting or challenging evidence, the parties have a right to make a record to support their ultimate claims on whether the land use standards are met and whether the requests should be approved, approved with modifications, or denied. These are complex cases subject to standards of judicial review involving comprehensive plan consistency determinations and establishing their positions by the presentation of competent substantial evidence. All of this is within the context of property rights, which we are bound to honor constitutionally.

Thus, it would be the height of unfairness to compel them to present their cases when they are unanimous in their view that they do not wish to do so at this time, and there are no reasonable grounds for the County to take any other action. They are entitled to a postponement to December 18, 2017 under these circumstances and under our standard operating procedures.

Thank you for your attention to these matters.