

From: [Wayne Bergman](#)
To: [Kelly Churney](#); [Paul Castro](#)
Cc: [James Murphy](#)
Subject: FW: Simmons Appeal Continuance Request
Date: Thursday, August 26, 2021 4:11:29 PM

Kelly – FYI – this will be deferred again in September.

Wayne Bergman, MCP, LEED® AP
Director

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From: Donald Lunny <Donald.Lunny@brinkleymorgan.com>
Sent: Thursday, August 26, 2021 3:41 PM
To: Wayne Bergman <wbergman@TownOfPalmBeach.com>
Cc: mziska@floridawills.com; jeubanks@sniffenlaw.com; John (Skip) C. Randolph <JRandolph@jonesfoster.com>
Subject: Simmons Appeal Continuance Request

*****Note: This email was sent from a source external to the Town of Palm Beach. Links or attachments should not be accessed unless expected from a trusted source. Additionally, all requests for information or changes to Town records should be verified for authenticity.*****

Dear Mr. Bergman:

It is my understanding that at my client's request, the Town Council continued the Simmons' pending appeal to the September 13, 2021 Town Council Development Review Meeting.

As you may remember, my client's Appeal will be dismissed once the Town receives a "comfort opinion" in a form reasonable to the Town Attorney (and which is copied to me) that in essence opines that (i) the Declaration of Use Agreement was duly executed by the business entity executing same, (ii) as recorded in the County's real property records, the record title holder of the The Palm House property is the same business entity as the business entity executing the Declaration of Use Agreement, and (iii) as of the Declaration of Use Agreement's recording in the County's real property records, that either (a) there were no prior liens of mortgagees which predate same, or (b) all of such prior mortgages have consented to the Declaration of Use Agreement and subordinated the lien of their respective mortgages to same.

Over the past month, I have had some discussions and e-mail with Mr. Randolph concerning the "comfort opinions." Additionally, he has requested Maura Ziska to obtain same and send same to him. Maura has advised that she has forwarded the request to her client so her client's corporate counsel can prepare them and/ or authorize their preparation as the case may be. She does not have an expected response date at this time.

Given my experience with the typical turnaround time for this kind of matter, I believe it is more likely than not the Town will not receive the "comfort" opinions prior to the time the Agenda cut-off deadline arrives for the September 13, 2021 Town Council Meeting, and so I want to ask at this time that the Simmons Appeal be continued for a hopefully last time. If I receive a copy of the requested comfort opinion and Mr. Randolph confirms he is satisfied with same at any time prior to the Meeting, I'll send you an email confirming that the Appeal is dismissed.

Given my schedule for an upcoming trial, I needed to make sure I got this to you earlier than would normally be expected.

Thank you for your continuing assistance.

DONALD J. LUNNY, JR. | PARTNER

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