




Interoffice Memorandum

AGENDA ITEM

August 1, 2018

TO: Mayor Teresa Jacobs
-AND-
Board of County Commissioners

FROM: Jon V. Weiss, P.E., Director
Community, Environmental and Development Services
Department 

CONTACT PERSON: Carol L. Knox, Manager, Zoning Division
(407) 836-5585

SUBJECT: August 21, 2018 – Consent Item
Hold Harmless and Indemnification Agreement for Elliot Ferwerda

On June 19, 2018, the Board of County Commissioners confirmed approval by the Board of Zoning Adjustment (BZA) of a zoning variance request for Elliot Ferwerda, located at 9940 Lone Tree Lane to construct a new residence 41 ft. from the Normal High Water Elevation (NHWE) in lieu of 50 ft. and a pool, pool deck, and pool enclosure 27 ft. from the NHWE in lieu of 50 ft. on Lake Sheen.

The BZA's recommendation for approval was conditioned on the recording of a Hold Harmless and Indemnification Agreement, which protects Orange County from any claims filed against it resulting from the County's granting of the variance on June 19, 2018.

ACTION REQUESTED: Approval and execution of Hold Harmless and Indemnification Agreement Parcel ID: 32-23-28-1874-00-200 by and between Elliot Ferwerda and Orange County to construct a new residence, pool, pool deck, and pool enclosure at 9940 Lone Tree Lane, Orlando, Florida 32836. District 1.

JVW/CLK:mof
Attachment

BCC Mtg. Date: August 21, 2018

Instrument prepared by:
Elliot Ferwerda
103 Olympus Circle
Jupiter, Florida 33477-7334

Return to:
Orange County Attorney's Office
P.O. Box 1393
Orlando, Florida 32802

**HOLD HARMLESS AND
INDEMNIFICATION AGREEMENT**
Parcel ID: 32-23-28-1874-00-200

This Hold Harmless and Indemnification Agreement (the "Agreement") is made by and between Elliot Ferwerda, whose mailing address is 103 Olympus Circle, Jupiter, Florida 33477-7334, (the "Homeowner") and Orange County, a charter county and political subdivision of the State of Florida, whose mailing address is c/o Orange County Administrator, P.O. Box 1393, Orlando, Florida 32802-1393 (the "County").

WITNESSETH:

WHEREAS, the Homeowner holds fee simple title to property located at 9940 Lone Tree Lane, Orlando, Florida 32836, which is more particularly described in **Exhibit "A"** attached hereto and incorporated herein by this reference (the "Property"); and

WHEREAS, the Property is homesteaded under the laws and constitution of the State of Florida; and

WHEREAS, the Homeowner desires to demolish the single family residence and construct a new single family residence, as well as a pool, pool deck, and pool enclosure (the new residence, pool, pool deck and pool enclosure may collectively be referred to as "Improvements"); and

WHEREAS, the Homeowner intends to construct the new residence no closer than

forty-one (41) feet from the normal high water elevation ("NHWE") and to construct the pool, pool deck and pool enclosure no closer than twenty-seven (27) feet from the NHWE of Lake Sheen in lieu of the fifty (50) foot setback required by County ordinance; and

WHEREAS, the Homeowner sought a variance, in part, from the setback requirements in the Orange County Code for demolition of the existing single family residence and construction of the Improvements; and

WHEREAS, on June 7, 2018, the County's Board of Zoning Adjustment ("BZA") approved that portion of the requested variance for the demolition of the existing residence and construction of the Improvements within the requested forty-one (41) feet and twenty-seven (27) feet setbacks from the Lake Sheen, and required the Homeowner to record a Hold Harmless Agreement in favor of the County; and

WHEREAS, on June 19, 2018, the Board of County Commissioners (the "Board") approved BZA's decision and granted approval for that portion of the Homeowner's requested variance for demolition of the existing single family residence and construction of the Improvements subject to the conditions ratified or established by the Board; and

WHEREAS, the Homeowner understands and agrees that the location of the Improvements within the fifty (50) foot setback area may significantly increase the likelihood of damage to structures, shoreline, and associated assets, and in spite of these risks the Homeowner desires the Improvements to be constructed within this setback area; and

WHEREAS, because this Agreement will be executed and recorded in the Official Records of Orange County, this Agreement serves as notice that the Improvements were or will be constructed within the fifty (50) foot setback from the normal high water elevation of Lake Sheen,

as authorized by a variance approved with conditions ratified or established by the Board on June 19, 2018.

NOW, THEREFORE, in consideration of these premises, the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Homeowner and the County hereby agree as follows:

1. **RECITALS.** The above recitals are true and correct and are hereby incorporated as a material part of this Agreement by this reference.

2. **HOLD HARMLESS AND INDEMNIFICATION.** The Homeowner, on behalf of himself and his successors, assigns, heirs, grantees, representatives, invitees, and permittees, assumes sole and entire responsibility for any and all damage to property sustained as a result of the County's granting of the variance request #VA-18-06-064 on June 19, 2018. The Homeowner agrees to release, indemnify, defend (with legal counsel acceptable to the County), and hold harmless the County, its Board members, officers, employees, contractors, agents, and elected and appointed officials from and against any and all claims, suits, judgments, demands, liabilities, damages, costs, and expenses (including, but not limited to, attorneys' fees, paralegals' fees, consultants' fees and costs at all administrative, pretrial, trial, and appellate levels) of any kind or nature whatsoever, including without limitation damage to property, arising out of or related in any way to the activities or operations on or use of the Improvements resulting from the County's granting of the variance request #VA-18-06-064 on June 19, 2018.

3. **COVENANTS RUNNING WITH THE LAND.** This Agreement runs with the Property, and is binding on all parties having any right, title or interest in the Property or any

portion thereof, their heirs, representatives, successors and assigns.

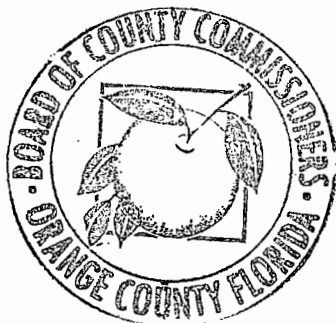
4. **AMENDMENT/TERMINATION.** This Agreement may be amended or terminated only by express written instrument approved by the Board and the Homeowner.

5. **APPLICABLE LAW.** This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida without regard to the principles of conflict of laws which may direct the application of laws of another jurisdiction.

6. **RECORDATION.** An executed original of this Agreement shall be recorded, at the Homeowner's expense, in the Official Records of Orange County, Florida.

7. **EFFECTIVE DATE.** This Agreement shall become effective on the date of execution by the County or the date of execution of the Homeowner, whichever is later.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective duly authorized representatives on the dates set forth below.



ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

By: *Teresa Jacobs*

Teresa Jacobs

Orange County Mayor

Date: 8.21.18

ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

By: *Katie Sweet*
Deputy Clerk

Date: AUG 22 2018

[REMAINING SIGNATURES ON FOLLOWING PAGE]

Signed, sealed and delivered in our presence as witnesses:

Signature: [Signature]

Printed Name: TIMOTHY B. LUNN

Signature: [Signature]

Printed Name: JULIANNE L LITZKOW

STATE OF ILLINOIS
COUNTY OF COOK

The foregoing instrument was acknowledged before me this 11 day of JULY, 2018, by Elliot Ferwerda, who is personally known to me or who has produced Florida D.L., as identification.

[Signature]
Notary Public, State of ILLINOIS No 6 At Large
OFFICIAL SEAL
CRISTIAN LOPEZ-TAPIA
NOTARY PUBLIC - STATE OF ILLINOIS
My Commission Expires Dec 8, 2019
Printed Name of Stamp

My Commission Expires: 12/08/2019

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EXHIBIT "A"

LEGAL DESCRIPTION

Parcel ID: 32-23-28-1874-00-200

CYPRESS SHORES FIRST ADDITION T/56 LOT 20