

EXECUTIVE SUMMARY

To: Alan S. Johnson, Executive Director
From: Mark E. Bannon, Investigator
Re: C12-012 – John J. Greene, Councilman, Village of Wellington

- **Background**

This Inquiry is based on a sworn Complaint against Village of Wellington (the Village) Councilman John J. Greene, and filed with the PBC Commission on Ethics (COE) by Juan Gando, a resident of Wellington and part owner of two (2) restaurants located within Wellington.

The basis of this complaint is that Respondent participated in discussions, and voted on two (2) separate occasions at Wellington Council Meetings, involving a Conditional Use Application filed with Wellington by “The Grille.” The Applicant asked the Village Council to approve 1) extended nighttime hours and 2) a change in the state liquor license under which the restaurant operates.

Respondent first participated in discussions on the Complainant’s Application on August 28, 2012. At this meeting, Respondent did disclose that he had an ex parte communication regarding this issue with Neil Hirsch, owner of a competing restaurant (Players Club) prior to the meeting. Respondent offered a motion at the August 28th meeting, which changed certain conditions requested within the Application. The interpretation by staff regarding this resolution gave the Applicant permission to operate The Grille under a 4COP liquor license, otherwise known as a “cocktail lounge” license. The Players Club operates under a 4COP license due to a settlement agreement with the Village some years ago. The 4COP-SRX license currently maintained by the Grille requires restaurants to maintain a ratio of 51% food sales and 49% liquor sales daily. The 4COP license for the Players Club requires the same ratio of food to liquor sales, but allows for the sales numbers to be monitored annually by the Village, rather than daily under state control.

After the vote on August 28th and preparation of the written resolution regarding the motion offered by Respondent, which included the change in liquor license, Respondent advised both the Mayor and Village Attorney that the resolution as written did not accurately reflect the motion he made at the August 28th meeting. The Village Attorney reviewed both a written transcript and a recording of that portion of the meeting, and agreed that there was confusion, and it was not clear what conditions the resolution set for the Applicant. The Village Attorney therefore advised that the matter should be re-presented for clarification at the next Council meeting on September 11, 2012. The item was presented to Council at the September 11th meeting and Respondent again participated and voted on the Application, which approved some of the requested conditions, and denied others, the most significant denial being Applicant’s request to operate his restaurant under a 4COP state liquor license.

The Complaint alleges that Respondent’s participation and votes on these occasions were in violation of the Code of Ethics. Complainant alleges that “Players Club,” which is owned and operated by Neil Hirsch, is a direct competitor of both his businesses, The Grille and Oli’s Fashion Cuisine. The Complainant was aware of the personal friendship between the Respondent and Hirsch, including the fact that Respondent recently received a gift of lodging at Hirsch’s residence, and that Respondent previously abstained from voting and participating in other matters involving Hirsch’s financial interests. The relationship of Respondent to Neil Hirsch had been previously addressed by the COE in an unrelated sworn complaint, C12-003, and two (2) separate Requests for Advisory Opinion, RQO 12-065 and RQO 12-045.

The video webcast of both the August 28th meeting, and the September 11th meeting were reviewed in their entirety by COE staff. Based on the closeness of the gift of temporary lodging given to Respondent by Hirsch (June 9 – August 15, 2012), and the announced ex parte communication between them prior to the initial meeting, the COE Executive Director determined that there was legal sufficiency to open a preliminary investigation.

- **Investigation**

The investigation included sworn interviews with Respondent, and Hirsch, as well as discussions with Wellington Growth Management Director Robert Basehart, Village Attorney Jeffery Kurtz, and Avery Chapman, who represented the Applicant at these meetings. Both Respondent and Hirsch stated under oath that their ex parte communication concerned a historical perspective of how Players Club obtained permission to operate under a 4COP liquor license, and the conditions imposed by the Village. Both stated that Respondent did not ask Hirsch about how he should vote on the Application, and Hirsch never offered an opinion as to this vote. Further, both stated that there was no quid pro quo or special benefit ever offered by Hirsch, or one received or promised to Respondent, based on the gift of lodging previously given to Respondent by Hirsch. That arrangement according to both individuals was based solely on their long personal friendship.

The Wellington staff members interviewed during the Investigation, including the Village Attorney, agreed that the motion made by Respondent at the August 28th meeting was unclear and ambiguous. The Attorney determined that the proper course was to resubmit the Application for clarification. The Inquiry and Investigation uncovered no evidence that Respondent and Hirsch have any relationship beyond their personal friendship, including any business or other financial relationship, or any factual basis to support a quid pro quo or improper gift given to influence the performance of an official act or legal duty.

- **Conclusion**

The investigation has not produced reasonably trustworthy facts and circumstances for the Commission on Ethics (COE) to believe that the Respondent, John J. Greene, violated the Palm Beach County Code of Ethics.



PALM BEACH COUNTY COMMISSION ON ETHICS

2633 Vista Parkway, West Palm Beach, Florida 33411

Hotline: 877-766-5920 or 561-233-0724

COMPLAINT FORM

1. Complainant (Person bringing Complaint) *Add pages, if necessary.*

Name: Juan Gando

Address: 12300 South Shore Blvd.

City: Wellington, FL

Zip: 33414

Home #:

Work #: 561-793-2110

Cell #: 561-603-2958

2. Respondent (Person against whom complaint is made) *Add pages, if necessary.*

Name: John J. Greene

Address: 11226 Maritime Court

City: Wellington FL

Zip: 33414

Home #:

Work #: 561-791-4000

Cell #:

Title/Office Held or Sought: Councilman, Village of Wellington Council

3. IF KNOWN, CHECK THE BOX OR BOXES THAT APPLY

☒ Allegation is against person in
County/Municipal Government

☐ Allegation is about County:
Whistleblower Retaliation

4. STATEMENT OF FACTS BASED ON YOUR PERSONAL KNOWLEDGE

In a separate attachment, please describe in detail the facts and actions that are the basis of your complaint, including the dates when the actions occurred. Also attach any relevant documents as well as names and contact information of persons who may be witnesses to the actions. If known, indicate the section of the ordinance you believe is being violated. For further instructions, see page 2 of this form.

5. OATH

I, the person bringing this complaint, do depose on oath or affirmation and say that the facts set forth in the foregoing complaint and attachments are true and correct, to the best of my knowledge and belief.

Signature of Person Making Complaint

STATE OF FLORIDA

COUNTY OF PALM BEACH

Sworn to (or affirmed) and subscribed before me this 27th day of SEPT, 2012, by

JUAN GANDO

(Name of Person Making Statement)

who is personally known to me ☐ or produced identification ☒. Type of identification produced:

FL DL G530423760840

(Signature of Notary Public, State of Florida)



(Print, Type, or Stamp Commissioned Name of Notary Public)

Addendum

September 26, 2012 Ethics Complaint against Councilman John J. Greene

Page 1 of 2

My name is Juan Gando and I am a resident of Wellington and an owner of both The Grille as well as Oli's Fashion Cuisine, restaurants located in Wellington. For the past several months, we have been engaged in the Conditional Use Application process in Wellington to obtain permission for The Grille to operate under a 4COP license (we have a 4COP-SRX license) and to extend our operating hours on week days and weekends. Our application was approved by a vote of 7-0 by the PZAB of Wellington, which recognized that The Grille should receive equal treatment as all of its competitors when it came to license approval and hours of operation.

When we then proceeded to the Village of Wellington Council, however, we were subject to the personal bias, agenda and nepotism of Mr. Greene. So that you understand my complaint, a bit of background is relevant here:

A direct competitor of both The Grille and Oli's is Players Club, owned and operated by Neil Hirsch, either directly or through his Family Trust. Councilman Greene is an admitted close personal friend of Mr. Hirsch and may also be involved in his trust. Twice in the last 60 days, Mr. Greene has either been forced to or has chosen to recuse himself from two separate Agenda items before the Village Council that directly affect the business and personal dealings of Mr. Hirsch: consideration of the Dressage Festival show grounds and consideration of the Blue Cypress residential development. His recusals are a matter of public record and he eventually filed his Form 8Bs for those matters.

The Grille was required to appear before the Village Council on September 11, 2012. At that time, and despite invitation to do so at that time, Mr. Greene refused to recognize his conflict and did not recuse himself. Instead, he offered the motion to affect The Grille's Conditional Use Application by granting The Grille part of the extended hours and, according to the verbatim record, allowing the 4COP license. Our Application was then passed, without prejudice to return to the Council. Mr. Greene should not have been voting on The Grille's Application given his avowed relationship with Mr. Hirsch and his previous recusals in Hirsch-related matters.

The problem with Mr. Greene was then compounded when, 3 days after the vote, he instructed the Village attorney, Mr. Kurtz, to inform our lawyer that Mr. Greene now claimed he was confused and did not mean to allow The Grille its 4COP license. He then directed staff to place the matter back on the September 26, 2012 Agenda before the Village Council for further deliberation.

Needless to say, we were stunned. Clearly Mr. Greene was trying to reverse some or all of what he had agreed to on September 11th.

At the September 26th hearing, and despite the verbatim record from September 11th that was clear, Mr. Greene stated that he did not mean to approve the 4COP license. (This element of The Grille's application was important because without the approval of the 4COP license, The Grille would encounter difficulties with the State concerning the ratio of food to alcohol sales during the Winter Equestrian Festival, when customer demand was high.)

Addendum

September 26, 2012 Ethics Complaint against Councilman John J. Greene

Page 2 of 2

Mayor Margolis was first presented with a demand for recusal by our attorney (copy attached), which was given to Mr. Greene to respond to. Mr. Greene again refused to recuse himself, despite the clear impropriety and appearance of impropriety in his considering the Application of a direct competitor to Mr. Hirsch's Players Club.

(A further relevant detail – Players Club is situated in exactly the same position as The Grille; it is located within a PUD and too close to residences to operate with a 4COP license without conditional use approval. The Village of Wellington, in 2006, in a Settlement Agreement to a code enforcement case, Players Club permission to operate under a 4COP license. Players Club has been operating until 1 am on weekdays and until at least 2 am on weekends since then and publically publishes those hours. The Settlement Agreement did not specify hours of operation.)

At Mr. Greene's urging, on September 26th, the Village Council, by a vote of 3-2, then reversed its earlier decision to allow the 4COP license and also removed the without prejudice section of the September 11th Resolution, leaving The Grille no ability to come before the Council until one year has passed.

Despite the direct relevance of The Grille's application to the Players Club and Mr. Hirsch, Mr. Greene not only saw fit to vote (twice) on our application, but even caused the Council to change its former decision, all to the detriment of The Grille and to the direct benefit of Players Club and Mr. Hirsch. The result is now the Players Club operates with a 4COP and with unlimited hours, with impunity, while The Grille is hamstrung by Mr. Greene's revised Resolution.

The Grille seeks a level playing field with its competition. When coming before the one governmental body that could level that field, we instead encountered the partisan, biased and unethical actions of Mr. Greene. He was placed on the ballot in a partisan election; he has twice been forced to recuse himself after complaints concerning his ties to Mr. Hirsch. He should not have participated at all in deliberations and voting on the Application of the Grille for a Conditional Use and he certainly should not have instigated a reversal of the Council's September 11th approval of much of The Grille's Application.

As a final note, it appears on his financial disclosures that since Mr. Greene's installation as a Councilman, he has gone from being employed to a private security consultant. He has no visible means of income and has accepted, for a time, private housing as a gift from Mr. Hirsch. The Commission should also investigate whether Mr. Greene is being paid, in any way, by Mr. Hirsch or any of his companies.

I am free to address the Commission at any time.

Juan Gando

CHAPMAN LAW GROUP, PLC
ATTORNEYS

The Chancellor Building
12008 South Shore Boulevard
Suite 107
Wellington, Florida 33414
(561) 753-5996 Telephone
(561) 753-9966 Facsimile

September 11, 2012

VIA HAND DELIVERY

Bob Margolis, Mayor
Village of Wellington
12300 Forest Hill Blvd.
Wellington, FL 33414

**Re: Demand For Recusal of Councilman John Greene from all matters
concerning:
The Grille CUA Petition 2012-017 CU2
Resolution RU2012-47**

Dear Mayor Margolis:

This correspondence constitutes the demand of our client The Grille, pursuant but not limited to, F.S. § 112.3143 and Palm Beach County Code of Ethics § 2-443, that Councilman John Greene recuse himself from all further discussion, deliberation, participation and voting with respect to the above-captioned Petition, Resolution and proceedings in the Village of Wellington.

As you are aware, in The Grille's Petition, our client seeks to operate under a full 4COP license and with extended hours of operation. That same license (4COP) and extended hours of operation are currently enjoyed by Players's Club, under the January 4, 2006 Settlement Agreement with the Village and as permitted by The Village as publically published (Monday to Thursday 5pm to 1 am, Friday to Sunday, 5 pm to 2 am). Our client merely seeks to compete on a level playing field with its competitor. Therefore, the status of The Player's Club 4COP license and its settlement agreement with The Village, as well as the extended hours of operation allowed The Player's Club were at issue under The Council's August 28, 2012 consideration of The Grille's Petition 2012-017 CU2 and Resolution RU2012-47 and as raised by Mr. Greene for reconsideration on tonight's Council Agenda.

The financial interests of Mr. Hirsch are directly concerned in any discussion of this matter and vote upon The Grille's Petition before The Council. As you are aware, Mr. Greene has recently acknowledged in Council proceedings that his relationship with Mr. Hirsch required his recusal for matters affecting Mr. Hirsch. The instant matter is no different and directly affects the financial benefits enjoyed by Mr. Hirsch as owner of Player's Club, a direct competitor of The Grille.

CUA Petition 2012-017 CU2 / Resolution RU2012-47

Demand for Recusal of John Greene

September 11, 2011

Page 2 of 2

Thus, Mr. Greene's recusal in the instant matter is not a matter of discretion but of obligation under law. Further, Mr. Greene has failed to previously disclose and file the appropriate Form 8B and supporting documentation detailing his relationship with Mr. Hirsch, both before his participation in the August 28, 2012 vote on the within Petition and also before the September 10, 2012 Agenda Review Session and before tonight's Village Council hearing. All of those failures are violations of state law and county ethics obligations. By reason of the foregoing, demand is therefore made upon Mr. Greene, and you as Chair of The Village Council, that Mr. Greene recuse himself immediately.

Very truly yours,

CHAPMAN LAW GROUP, PLC

AVERY S. CHAPMAN



cc: client

**DIVISION OF ALCOHOLIC BEVERAGES AND TOBACCO
BUREAU OF LICENSING**

TYPES OF LICENSES/PERMITS	CLASS	STATUTE	BRIEF DESCRIPTION ADDITIONAL REQUIREMENTS MAY APPLY
1. 1 APS (beer only)		563.02	For sale in sealed containers and for consumption off premises only.
	D	568.01	Restricted to products with no more than 6.243% of alcohol by volume or 5% by weight.
2. 2 APS (beer and Wine,)		564.02	For sale in sealed containers and for consumption off premises only.
	D	568.01	Restricted to products with no more than 6.243% of alcohol by volume or 5% by weight.
3. 1COP (beer only)		563.02	For sale by the drink (consumption on premises) or in sealed containers for package sales.
	D	568.01	Restricted to products with no more than 6.243% alcohol by volume or 5% by weight.
	X	565.02	Issued only on boats and for consumption on premises only. May not be issued for a boat that is anchored upon, or plies upon, any lake.
4. 2COP (beer and Wine,)		564.02	For sale by the drink (consumption on premises) or in sealed containers for package sales.
	D	568.01	Restricted to products with no more than 6.243% alcohol by volume or 5% by weight.
	X	565.02	Issued only on boats and for consumption on premises only. May not be issued for a boat that is anchored upon, or plies upon, any lake.
5. Quota 3DPS / 3CPS / 3BPS / 3APS / 3PS (depending on county population)		565.02(1)(a)	Beer, Wine, and Liquor; package sales only in sealed containers. No sales by the drink or consumption on premises.
6. Quota 8COP / 7COP / 6COP / 5COP / 4COP (depending on county population)		565.02(1)(b-f)	Beer, Wine, and Liquor; sale by the drink for consumption on premises and package sales in sealed containers.
*Special Motel / Hotel 8COP / 7COP / 6COP / 5COP / 4COP (depending on county population)	S	561.20(2)	Beer, Wine, and Liquor in connection with operation of hotel, motel, motor court or condominium; sale by the drink for consumption on premises and package sales in sealed containers. Motel or hotel must be operating and meet requirements on number of rental rooms.
*Special Restaurant (pre-1958) 8COP / 7COP / 6COP / 5COP / 4COP (depending on county population)	SR	561.20	Beer, Wine, and Liquor in connection with operation of a restaurant; sale by the drink for consumption on premises and package sales in sealed containers. Must have 4,000 square feet of floor space and be able to seat 200 patrons at tables. Sale of alcoholic beverages prohibited when food service not available. License cannot move to a new location.
*Special Hospital (4COP Only)	H	HB1873	Beer, Wine, and Liquor, sales to patients only. Sarasota County Public Hospital Board only. No annual fee. See special act for requirements.

*Special Hotel (7COP and 8COP)	SH	561.20	Beer, Wine, and Liquor in counties having a population of 50,000 or less; sale by the drink for consumption on premises and package sales in sealed containers
*Special Restaurant 8COP / 7COP / 6COP / 5COP / 4COP (depending on county population)	SRX	561.20(2)	Beer, Wine, and Liquor in connection with a restaurant; consumption on premises only. May only have spirituous beverages (liquor) in quarts, fifths or miniatures. Must meet certain requirements as to the number of seats, square footage, etc. Sale of alcoholic beverage prohibited when food service not available. License cannot be moved to a new location.
*Special Bowling Alley 8COP / 7COP / 6COP / 5COP / 4COP (depending on county population)	SBX	561.20(2)	Beer, Wine, and Liquor; consumption on premises by the drink only. Must meet requirements of 12 or more lanes and all necessary equipment to operate them. License cannot be moved to a new location.
*Special Boats 8COP / 7COP / 6COP / 5COP / 4COP (depending on county population)	SPX	565.02(3)	Pleasure, excursion, sight seeing or charter boat meeting special requirements. Consumption on premises only.
*Special Airport 8COP / 7COP / 6COP / 5COP / 4COP (depending on county population)	SAL	561.20(2)	Beer, Wine, and Liquor for consumption on premises only at publicly owned or operated airport.
*Special Civic Center 8COP / 7COP / 6COP / 5COP / 4COP (depending on county population) (\$250)	SCX	561.20(2)	Beer, Wine, and Liquor for consumption on premises only; license issued to Civic Center authority authorized by state law or local government ordinance.
*Special County Commissioner 8COP / 7COP / 6COP / 5COP / 4COP (depending on county population)	SCC	561.20(2)	Beer, Wine, and Liquor for consumption on premises only; license issued to county commissioners for facilities which are owned and operated by the county.
*Special Act 8COP / 7COP / 6COP / 5COP / 4COP (depending on county population)	SA	Special Act	Allow the sale of Beer, Wine, and Liquor for consumption on the premises only. See Special Acts for specifics.
*Special Act 8COP / 7COP / 6COP / 5COP / 4COP (depending on county population)	SAX	Special Act	Allow the sale of Beer, Wine, and Liquor for consumption on the premises only. MAY NOT MOVE FROM THE ORIGINAL LOCATION. See Special Acts for specific requirements.
*The series listed in the above items under #6 precedes the listed class codes, and the fees are assessed according to population as indicated on the license fee chart			
7. 3M license (\$1000)		565.02(1)	Beer, Wine, and Liquor consumption on premises. Must have more than three (3) separate rooms or enclosures in which permanent bars or counters are located on the licensed premises.
*Special Theme Park License Special 3M license: Up to 5 additional bars (\$1500) 6-10 additional bars (\$2500) more than 10 additional bars (\$3500)		565.02(6)	Consumption on premises only, additional requirements to be met.
8. GC - Golf Club License (\$100)		565.02(1)(g)	Beer, Wine, and Liquor, additional license issued to golf clubs which are ineligible for an 11C club license. Authorizes service from mobile carts or permanent or semi-permanent points on the licensed premises.

9. 11PA (\$400) Symphony Orchestra		565.02(8)	A state-chartered legal entity not for profit for the purpose of supporting the affairs of a symphony orchestra. Consumption on premises only.
Live Performance Theater		565.02(10)	A state-chartered legal entity not-for-profit organized for the purpose of operating a theater with live performances and not fewer than 100 seats. Consumption on premises only.
Performing Arts Center		561.01(17)	Facility consisting of not less than 200 seats, owned and operated by a not-for-profit corporation qualified under the provisions of s. 501(c)(3), which is used and occupied to promote development of any or all of the performing, visual, or fine arts.
Performing Arts Center		561.20(2)(i)	Beer, Wine, and Liquor; Consumption on Premises only may occur only in conjunction with an artistic, educational, cultural, promotional, civic, or charitable event, except as part of food and beverage service for banquets or receptions.
10. FEX Special Public Fair / Expositions (\$250)		561.20(2)(g)	Consumption on premises only and meet additional requirements.
11. HBX Special Horse Breeders (\$1820,\$1560,\$1300,\$858,\$624)		561.20(10)	Consumption on premises. Issued to any marketing association of horse breeders organized under the laws of the state. Additional requirements to be met.
12. 11C – Club (\$400)		561.20(7) 565.02(4)	Beer, Wine, and Liquor. Issued to bona fide clubs for consumption on premises by the drink for members and members' guests only. No package sales allowed. Unless otherwise noted, must be in continuous active existence and operation for a period of two years in the county where it exists.
a. Lodges or Clubs of National and Fraternal or Benevolent Associations		561.20(7)(a) (1) 565.02(4)	Special requirements must be met. Consumption on premises only. May not increase in series to an 11CS. Need not be in continuous active existence for two year in the county location.
b. Social Clubs, Clubs devoted to community and governmental development		561.20(7)(a) (3) 565.02(4)	Beer, Wine, and Liquor. Issued to bona fide clubs for sale by the drink for consumption on premises only, for members and members' guests. No package sales allowed. Must be in continuous active existence and operation for a period of not less than two years in the county where it exists.
c. Clubs promoting showmen and amusement enterprises. Clubs assisting National fraternal or benevolent associations and clubs promoting cultural relations of people of the same nationality		561.20(7)(a) (4-6) 565.02(4)	Beer, Wine, and Liquor. Issued to bona fide clubs for sale by the drink for consumption on premises only, for members and members' guests. No package sales allowed. Must be in continuous active existence and operation for a period of not less than two years in the county where it exists.
d. Tennis or Racquetball Club, Cabana or Beach Club		561.20(7)(c) 565.02(4)	Tennis/Racquetball; Bona fide tennis club or four-walled indoor racquetball club. 10 regulation courts or combination courts. Additional requirements to be met.
		561.20(7)(d) 565.02(4)	Cabana/Beach Club; Beach facilities, pool, locker rooms and additional requirements to be met.
13. 11CS – Club (\$1750)		Ch.63-1412 SB 1289	Special club license; cannot be moved to a new location; not transferable; consumption on premises only.

14. 11AL – Club (\$500)		561.20(11)	Beer, Wines, and Liquor. Issued to American Legion Post in Florida chartered prior to September 16, 1919. Sales may be made to resident guests as well as members and nonresident guests for consumption on the premises only. Revenue generated from the sale of alcoholic beverages which exceeds the cost of operation must be donated to a local non-profit charitable organization on an annual basis.
15. 11CT – Club (\$400)		565.02(11)	Issued to the Board of Trustees of the John & Mable Ringling Museum of Art or the board's designee. Permits sales for consumption on premises of the museum in conjunction with artistic, educational, cultural, civic or charitable events.
16. 11CX – Club (\$100)		565.02(1)(g)	Can only be issued to a Golf Club (11CG or 11 CGP) license holder. May operate service or portable bars on contiguous property.
17. 11CG – Golf Clubs		565.02(4)	Standard Golf Course consisting of at least 9 holes, clubhouse, locker rooms and attendant golf facilities, comprising at least 35 acres. Sales may be made to members and nonresident guests for consumption on the premises only.
18. NMSP – Non-member Sales Permit (\$50)		565.02(4)	Holders of golf club licenses (11CG). Sale to non-members. One event per year, not to exceed 8 consecutive days.
19. 11CG – Public Golf Clubs	P	561.20(7)(b) 564.02(4)	Standard Golf Course open to the general public consisting of at least 9 holes, clubhouse, locker rooms and attendant golf facilities, comprising at least 35 acres. Sales may be made for consumption on the premises only.
Fee for the 11 CG P license are assessed according to population as indicated on the license fee chart			
20. 12RT – Race Track Caterer at Dog and Horse Tracks		565.02(5) 550.6315 551.119	Beer, Wine, and Liquor for consumption on premises by the drink only. Package sales not allowed. May only have spirituous beverages (liquor) in quarts, fifths, or miniatures. Alcoholic beverage sales allowed only 10 days before to 10 days after approved racing or Jai Alai dates. If the caterer is also licensed under 551.119, the facility may served alcohol any day it is open for slot machine play.
21. Common Carriers		565.02	
a. IX - Railroads Master - \$2,500 + \$10 each dining, club, parlor, buffet or observations car		565.02(2)	Consumption in designated cars. No package Additional requirements to be met.
b. X - Steamships/Buses/Airplanes Master - \$1,100 + \$25 for each steamship, bus or airplane		565.02(3)	Consumption on premises only. Must be engaged in Interstate or foreign commerce or plying between fixed terminals and upon fixed schedules. Additional requirements.
c. XL – Common Carrier Waiting Lounges at Airports (\$1,100) per lounge		565.02(3)(a)(2)	Licenses are issued to airlines operating no more than one (1) passenger waiting lounge at each of its terminals at airports for ticketed passengers whose flights are scheduled to depart within 24 hours of service and guests in the company of ticket holder. For consumption on the premises only.
d. PVP - Cruise Ships (\$1,100)		565.02(8)	Passenger vessels engaged exclusively in foreign commerce with cabin berth capacity for at least 75 passengers. Consumption on board only.

22. ODP – One, Two or Three-Day Permit (\$25)		561.422	A bona fide non-profit civic organization may apply for sale of alcoholic beverages on premises for a period not to exceed 3 days; no more than 3 permits per calendar year.
23. SODP – One, Two or Three-Day Permit (\$25)		Laws of Florida Special Acts	A bona fide non-profit civic organization may apply for sale of alcoholic beverages on premises for a period not to exceed 3 days; no more than 15 permits per calendar year. See special acts for specifics.
24. SSL – Special Sales License (\$25)		561.20	Beer, Wine, and Liquor; package sales only, special license issued for the purpose of a bulk transfer pursuant to Chapter 676; sale pursuant to levy and execution; sale by an insurance company in possession of alcoholic beverages; bankruptcy sales; sale due to license suspension or revocation; sale of damaged goods by a common carrier; sale by a bona fide Wine collector; sale of packaged alcoholic beverages pursuant to Part 5 of Chapter 679. Valid for three (3) days only.
25. AMW (\$1000)		564.02(2)	Engaged in manufacturing or bottling Wine.
26. BMWC (\$2000)		564.02(2)	Engaged in manufacturing of Wines and Cordials.
27. CMB (\$3000)		563.02(2)	Manufacturer engaged in brewing malt beverages.
28. CMBP (\$500)		563.02	Manufacturer engaged in the business of brewing less than 10,000 kegs of malt beverage annually; for consumption on premises only. Issued in connection with consumption on premises retail license.
29. DD (\$4000)		565.03	A Distiller of spirituous liquor.
30. EDB (\$1250)		565.03	Distributes alcoholic beverages containing no more than 3.2% of alcohol by weight in dry counties.
31. ERB (\$4000)		565.03	In business of rectifying and blending spirituous beverages.
32. KLD (\$4000)		565.03(2)	May distribute spirituous, vinous, and malt beverages to vendors and distributors.
33. KLD2 (\$1000)		565.03	May distribute spirituous, vinous, and malt beverages to vendors and distributors in counties having a population of 15,000 or less if the county is wet.
34. JDBW (\$1250)		564.02(3)	Distributes beer and/or Wine, to vendors and other distributors.
35. JDSW (\$50)		564.02(3)	Distributes only sacramental Wines to permit holders.
36. BSA (Brokers / Sales Agents) (\$500)		561.14(4)	Licensed to sell, or cause to be sold, shipped, invoiced, alcoholic beverages to licensed manufacturers, distributors and no one else in the state.
37. IMPR (Importers) (\$500)		561.14(5)	Licensed to sell, or cause to be sold, shipped and invoiced, domestic and foreign alcoholic beverages to licensed manufacturers, distributors and no one else in the state.
38. MEXP (Exporter) (No fee)		561.01(16)	Any person who sells alcoholic beverages to persons for use outside the state and includes a ship's chandler and a duty free shop.

39. LQS – Salesmen of Wine, and Spirits (\$50)		561.68	Before any person may solicit or sell to vendors or become employed as a salesman of spirituous or vinous beverages for a licensed Florida distributor, a salesman's license must be obtained. The application along with fingerprints must be filed with Central office licensing.
40. BRND - Brand Registration Beer (\$30)		563.045	All malt beverages that move or are caused to be moved, sold, or offered for sale with state must be registered. Additional requirements must be met.
BRND Primary American Source of Supply			Licensure as the Primary American Source of Supply authorizes the shipment of vinous or spirituous alcoholic beverages to distributors, importers, manufacturers, bonded warehouses and registered exporters within the state. The PAS must be licensed for each product that they ship within and without the state. Additional requirements must be met.
A. Liquor (\$30)		565.09	
B. Wine, (\$15)		564.041	
41. VP – Vehicle Permit (\$5)		561.57	Vendors are permitted to pick up merchandise at distributors' place of business with required decal obtained at appropriate district office.
42. OPS – Off-Premises Storage Permit (No fee)		561.07 562.03 565.03(2)	Off premises storage of alcoholic beverages with approval of the appropriate district office. Off premises storage of alcoholic beverages with approval of the appropriate district office.
43. TCP – Temporary Convention Permit (No fee)		561.421	A permit for the display by manufacturers or distributors of their products in convention halls, coliseums and similar type buildings where there is an existing beverage license, and with the approval of the Division for an event not to exceed 5 calendar days. For consumption on premises only.
44. SBW – State Bonded Warehouse (\$1)		562.25	Licensed warehouse to store alcoholic beverages. Bond required. Additional requirements to be met.
45. 14BC – Bottle Club (\$500)		561.01(15)	Commercial establishment operated for a profit wherein patrons consume alcoholic beverages which are brought onto the premises and not sold by the establishment.
46. RTPD – Retail Tobacco Products Dealer (\$50)		569.003	Permits the retail sale of cigarettes and other tobacco products to persons who are at least 18 years of age. Purchases of cigarettes and other tobacco products must be made through a licensed wholesale dealer.
47. RTPD – Retail Tobacco Products Dealer (\$50)		569.003	Permits the retail sale of cigarettes and other tobacco products to persons who are at least 18 years of age. Purchases of cigarettes and other tobacco products must be made through a licensed wholesale dealer.
48. CWD – Cigarette Wholesale Dealer (\$100)		210.15(1)	Sale of Cigarettes to retail dealers for resale only.
49. CDA – Cigarette Distributing Agent (\$100)		210.15(1)	Permits receiving cigarettes in interstate or intrastate commerce and storage.
50. EXP – Cigarette Exporter (\$100)		210.15(1)	Transports tax-exempt cigarettes into state under bond for delivery beyond the borders of this state.

51. TWD – Tobacco Wholesale Dealer (\$25)		210.40	Tobacco products means loose tobacco suitable for smoking, snuff, snuff flour, etc. Does not include cigarettes or cigars. Licensed as distributor for sale to retailers. Additional requirements to be met.
52. CMFG – Cigarette Manufacturer (\$100)		210.15(1)	Any domestic person or entity with a valid permit under 26 U.S.C. s. 5712 which manufactures, fabricates, assembles, processes, or labels a finished cigarette.
53. CIMP – Cigarette Importer (\$100)		210.15(1)	Any domestic person or entity with a valid permit under 26 U.S.C. s. 5712 who imports into the United States, directly or indirectly, a finished cigarette for sale or distribution.
54. 13CT – Caterer (\$1820)		561.20	Permits any caterer licensed by the Division of Hotels and Restaurants under chapter 509 and deriving at least 51% of its gross revenue from the service of food and non-alcoholic beverages to sell or serve alcoholic beverages for consumption on the premises of any catered event at which the licensee is also providing prepared food. All alcoholic beverages must be purchased from a licensed vendor.
55. SWP – Sacramental Wine, Permit		564.03(2)	Any religious order, monastery, church or religious body, or any minister, pastor, priest or rabbi may obtain a permit to purchase Wine, from a distributor or retailer for sacramental purposes.

Select Year: 2012

The 2012 Florida Statutes

[Title XXXIV](#)
ALCOHOLIC BEVERAGES AND
TOBACCO

[Chapter 561](#)
BEVERAGE LAW:
ADMINISTRATION

[View Entire
Chapter](#)

561.20 **Limitation upon number of licenses issued.—**

(1) No license under s. [565.02\(1\)\(a\)-\(f\)](#), inclusive, shall be issued so that the number of such licenses within the limits of the territory of any county exceeds one such license to each 7,500 residents within such county. Regardless of the number of quota licenses issued prior to October 1, 2000, on and after that date, a new license under s. [565.02\(1\)\(a\)-\(f\)](#), inclusive, shall be issued for each population increase of 7,500 residents above the number of residents who resided in the county according to the April 1, 1999, Florida Estimate of Population as published by the Bureau of Economic and Business Research at the University of Florida, and thereafter, based on the last regular population estimate prepared pursuant to s. [186.901](#), for such county. Such population estimates shall be the basis for annual license issuance regardless of any local acts to the contrary. However, such limitation shall not prohibit the issuance of at least three licenses in any county that may approve the sale of intoxicating liquors in such county.

(2)(a) No such limitation of the number of licenses as herein provided shall henceforth prohibit the issuance of a special license to:

1. Any bona fide hotel, motel, or motor court of not fewer than 80 guest rooms in any county having a population of less than 50,000 residents, and of not fewer than 100 guest rooms in any county having a population of 50,000 residents or greater; or any bona fide hotel or motel located in a historic structure, as defined in s. [561.01\(21\)](#), with fewer than 100 guest rooms which derives at least 51 percent of its gross revenue from the rental of hotel or motel rooms, which is licensed as a public lodging establishment by the Division of Hotels and Restaurants; provided, however, that a bona fide hotel or motel with no fewer than 10 and no more than 25 guest rooms which is a historic structure, as defined in s. [561.01\(21\)](#), in a municipality that on the effective date of this act has a population, according to the University of Florida's Bureau of Economic and Business Research Estimates of Population for 1998, of no fewer than 25,000 and no more than 35,000 residents and that is within a constitutionally chartered county may be issued a special license. This special license shall allow the sale and consumption of alcoholic beverages only on the licensed premises of the hotel or motel. In addition, the hotel or motel must derive at least 60 percent of its gross revenue from the rental of hotel or motel rooms and the sale of food and nonalcoholic beverages; provided that the provisions of this subparagraph shall supersede local laws requiring a greater number of hotel rooms;

2. Any condominium accommodation of which no fewer than 100 condominium units are wholly rentable to transients and which is licensed under the provisions of chapter 509, except that the license

shall be issued only to the person or corporation which operates the hotel or motel operation and not to the association of condominium owners;

3. Any condominium accommodation of which no fewer than 50 condominium units are wholly rentable to transients, which is licensed under the provisions of chapter 509, and which is located in any county having home rule under s. 10 or s. 11, Art. VIII of the State Constitution of 1885, as amended, and incorporated by reference in s. 6(e), Art. VIII of the State Constitution, except that the license shall be issued only to the person or corporation which operates the hotel or motel operation and not to the association of condominium owners;

4. Any restaurant having 2,500 square feet of service area and equipped to serve 150 persons full course meals at tables at one time, and deriving at least 51 percent of its gross revenue from the sale of food and nonalcoholic beverages; however, no restaurant granted a special license on or after January 1, 1958, pursuant to general or special law shall operate as a package store, nor shall intoxicating beverages be sold under such license after the hours of serving food have elapsed; or

5. Any caterer, deriving at least 51 percent of its gross revenue from the sale of food and nonalcoholic beverages, licensed by the Division of Hotels and Restaurants under chapter 509. Notwithstanding any other provision of law to the contrary, a licensee under this subparagraph shall sell or serve alcoholic beverages only for consumption on the premises of a catered event at which the licensee is also providing prepared food, and shall prominently display its license at any catered event at which the caterer is selling or serving alcoholic beverages. A licensee under this subparagraph shall purchase all alcoholic beverages it sells or serves at a catered event from a vendor licensed under s. 563.02(1), s. 564.02(1), or licensed under s. 565.02(1) subject to the limitation imposed in subsection (1), as appropriate. A licensee under this subparagraph may not store any alcoholic beverages to be sold or served at a catered event. Any alcoholic beverages purchased by a licensee under this subparagraph for a catered event that are not used at that event must remain with the customer; provided that if the vendor accepts unopened alcoholic beverages, the licensee may return such alcoholic beverages to the vendor for a credit or reimbursement. Regardless of the county or counties in which the licensee operates, a licensee under this subparagraph shall pay the annual state license tax set forth in s. 565.02(1)(b). A licensee under this subparagraph must maintain for a period of 3 years all records required by the department by rule to demonstrate compliance with the requirements of this subparagraph, including licensed vendor receipts for the purchase of alcoholic beverages and records identifying each customer and the location and date of each catered event. Notwithstanding any provision of law to the contrary, any vendor licensed under s. 565.02(1) subject to the limitation imposed in subsection (1), may, without any additional licensure under this subparagraph, serve or sell alcoholic beverages for consumption on the premises of a catered event at which prepared food is provided by a caterer licensed under chapter 509. If a licensee under this subparagraph also possesses any other license under the Beverage Law, the license issued under this subparagraph shall not authorize the holder to conduct activities on the premises to which the other license or licenses apply that would otherwise be prohibited by the terms of that license or the Beverage Law. Nothing in this section shall permit the licensee to conduct activities that are otherwise prohibited by the Beverage Law or local law. The Division of Alcoholic Beverages and Tobacco is hereby authorized to adopt rules to administer the license created in this subparagraph, to include rules governing licensure, recordkeeping, and enforcement. The first \$300,000 in fees collected by the division each fiscal year pursuant to this subparagraph shall be deposited in the Department of Children and Family Services' Operations and Maintenance Trust Fund to be used only for alcohol and drug abuse education, treatment, and

prevention programs. The remainder of the fees collected shall be deposited into the Hotel and Restaurant Trust Fund created pursuant to s. 509.072.

However, any license heretofore issued to any such hotel, motel, motor court, or restaurant or hereafter issued to any such hotel, motel, or motor court, including a condominium accommodation, under the general law shall not be moved to a new location, such license being valid only on the premises of such hotel, motel, motor court, or restaurant. Licenses issued to hotels, motels, motor courts, or restaurants under the general law and held by such hotels, motels, motor courts, or restaurants on May 24, 1947, shall be counted in the quota limitation contained in subsection (1). Any license issued for any hotel, motel, or motor court under the provisions of this law shall be issued only to the owner of the hotel, motel, or motor court or, in the event the hotel, motel, or motor court is leased, to the lessee of the hotel, motel, or motor court; and the license shall remain in the name of the owner or lessee so long as the license is in existence. Any special license now in existence heretofore issued under the provisions of this law cannot be renewed except in the name of the owner of the hotel, motel, motor court, or restaurant or, in the event the hotel, motel, motor court, or restaurant is leased, in the name of the lessee of the hotel, motel, motor court, or restaurant in which the license is located and must remain in the name of the owner or lessee so long as the license is in existence. Any license issued under this section shall be marked "Special," and nothing herein provided shall limit, restrict, or prevent the issuance of a special license for any restaurant or motel which shall hereafter meet the requirements of the law existing immediately prior to the effective date of this act, if construction of such restaurant has commenced prior to the effective date of this act and is completed within 30 days thereafter, or if an application is on file for such special license at the time this act takes effect; and any such licenses issued under this proviso may be annually renewed as now provided by law. Nothing herein prevents an application for transfer of a license to a bona fide purchaser of any hotel, motel, motor court, or restaurant by the purchaser of such facility or the transfer of such license pursuant to law.

(b) Any county in which special licenses were issued under the provisions of s. 561.20(2)(b) in effect prior to the effective date of this act shall continue to qualify for such licenses pursuant to those provisions in effect prior to the effective date of this act, and shall not be affected by the provisions of paragraph (a), except that in such counties, any restaurant located in a specialty center built on governmentally owned land shall be subject to the provisions of paragraph (a).

1. A specialty center means any development having at least 50,000 square feet of leasable area, containing restaurants, entertainment facilities, and specialty shops, and located adjacent to a navigable water body. Alcoholic beverages sold for consumption on the premises by a vendor in a specialty center may be consumed within the specialty center but may not be removed from such premises.

2. A specialty center also means any enclosed development that has at least 170,000 square feet of leasable area that is under the dominion and physical control of the owner or manager of the enclosed development, containing restaurants, entertainment facilities, specialty shops, and a movie theater with at least 18 operating screens. Alcoholic beverages sold for consumption on the premises by a vendor in a specialty center may be consumed only in areas designated pursuant to s. 561.01(11) and may not be removed from the designated area.

(c) In addition to any special licenses that may be issued under the provisions of paragraph (a), the division is authorized to issue special licenses to qualified applicants who own or lease bowling establishments having 12 or more lanes and all necessary equipment to operate them. Any license issued

for any bowling establishment under the provisions of this paragraph shall be issued only to the owner of the bowling establishment or, in the event the bowling establishment is leased, to the lessee of the bowling establishment; and the license shall remain in the name of the owner or lessee so long as the license is in existence. Any such license issued under this paragraph shall not be moved to a new location. No license issued pursuant to this paragraph shall permit the licensee to sell alcoholic beverages by the package for off-the-premises consumption. The provisions of this paragraph do not preclude any bowling establishment from holding a beverage license issued pursuant to any other provision of this section.

(d) Any board of county commissioners may be issued a special license which shall be issued in the name of the county and be applicable only in and for facilities which are owned and operated by the county and in which the sale and consumption of alcoholic beverages are not otherwise prohibited. The license may be transferred from one qualified county facility to another upon written notification to the department.

(e) The owner of a hotel, motel, or motor court may lease his or her restaurant operation to another corporation, individual, or business association that, upon meeting the requirements for a restaurant license set forth in this chapter, may operate independently of the hotel, motel, or motor court and be permitted to provide room service for alcoholic and intoxicating beverages within such hotel, motel, or motor court in which the restaurant is located.

(f) In addition to the exceptions set forth in this subsection, no such limitation of the number of licenses as herein provided shall prohibit the issuance of special airport licenses as defined in s. 561.01 (12) to restaurants that are a part of, or serve, publicly owned or leased airports. The special airport license provided for herein shall allow for consumption within designated areas of the airport terminal as defined in s. 561.01(13). Any holder of such special license located at a publicly owned and operated airport may sell and serve alcoholic beverages for consumption on the premises to the general public under such license in not more than four places or locations in control of the holder of such license. Any license so issued may not be transferred to a new location, except that a vendor operating a place of business under a special license may transfer such license when the publicly owned or leased airport at which the vendor operates a place of business under a special license moves its terminal facilities on the same airport premises, or when the airport is required by law to move its entire operation to a new location. Any license so issued shall entitle the vendor operating a place of business under such license to sell to airlines vinous beverages and distilled spirits in sealed miniature containers and other alcoholic beverages for consumption on the aircraft using the facility, but only for consumption by the passengers of the aircraft when such aircraft is airborne.

(g) In addition to any special licenses issued under the Beverage Law, the division may issue a special license for consumption on the premises only to any public fair or exposition which is organized in accordance with chapter 616. No licensee under this special license shall enter into any exclusive contract for its use. The special license may not be used in connection with any youth agricultural activity or during any regularly scheduled public fair or exposition, and such license may be used only in connection with special events held on the premises of the fairgrounds, which premises are considered to be licensed premises under the dominion and control of the public fair or exposition authority at all times. This special license is not transferable.

(h) In addition to any special licenses issued under the Beverage Law, the division may issue a special license for consumption on the premises only to any civic center authority or sports arena authority which is authorized by state law or by a local government ordinance or which civic center or sports arena is otherwise owned by a political subdivision of this state. The license may be transferred

to a qualified applicant authorized by contract with the authority to provide food service for the facility. The license shall at all times remain the exclusive property of the authority, and upon termination by any manner of the contract between the authority and the applicant concerning the furnishing of food service, the license shall revert to the authority by operation of law.

(i) The division shall not charge a fee in excess of \$250 for the license authorized by paragraph (g) or paragraph (h).

(j) In addition to any special licenses issued under the Beverage Law, the division may issue a special license for consumption on the premises only to a performing arts center, provided that any consumption of alcoholic beverages under this license, except as part of food and beverage service for banquets or receptions, may occur only in conjunction with an artistic, educational, cultural, promotional, civic, or charitable event occurring on the premises under the authorization of or offered directly by the performing arts center. The license may be transferred to a qualified applicant authorized by contract with the performing arts center to provide food and beverage service for the center. The license shall at all times remain the exclusive property of the performing arts center, and upon termination by any manner of the contract between the performing arts center and the applicant concerning the furnishing of food and beverage service, the license shall revert to the performing arts center by operation of law. The division shall not charge a fee in excess of \$400 for the license authorized by this paragraph.

(3) The limitation upon the number of such licenses to be issued as herein provided does not apply to existing licenses or to the renewal or transfer of such licenses; but upon the revocation of any existing license, no renewal thereof or new license therefor shall be issued contrary to the limitation herein prescribed.

(4) The limitations herein prescribed shall not affect or repeal any existing or future local or special act relating to the limitation by population and exceptions or exemptions from such limitation by population of such licenses within any incorporated city or town or county that may be in conflict herewith. Any license issued under a local or special act relating to the limitation by population shall be subject to all requirements and restrictions contained in the Beverage Law that are applicable to licenses issued under subsection (1).

(5) Provisions of subsections (2) and (4) as amended by chapter 57-773, Laws of Florida, shall take effect January 1, 1958, and shall apply only to those places of business licensed to operate after January 1, 1958, and shall in no manner repeal or nullify any license issued under provisions of law which are now operating or will operate prior to the effective date January 1, 1958; and all such places of business shall be exempt from the provisions of this law so long as they are in continuous operation.

(6) When additional licenses become available by reason of an increase in population or by reason of a county permitting the sale of intoxicating beverages when such sale has been prohibited, the division may issue the number of new licenses that become available by reason of the last regular population estimate; however, in no event shall any person, firm, or corporation licensed as a vendor under subsection (1) have an interest, directly or indirectly, in more than 30 percent of the number of licenses authorized for issuance in such county. Notwithstanding the foregoing limitation, any licensed vendor having an interest, directly or indirectly, in more than 30 percent of the licenses authorized for issuance in any one county on July 1, 1981, may continue to qualify for such licenses.

(7)(a) There shall be no limitation as to the number of licenses issued pursuant to s. 565.02(4). However, any licenses issued under this section shall be limited to:

1. Subordinate lodges or clubs of national fraternal or benevolent associations;

2. Golf clubs, tennis clubs, and beach or cabana clubs which are municipally or privately owned or leased;

3. Nonprofit corporations or clubs devoted to promoting community, municipal, or county development or any phase of community, municipal, or county development;

4. Clubs fostering and promoting the general welfare and prosperity of members of showmen and amusement enterprises;

5. Clubs assisting, promoting, and developing subordinate lodges or clubs of national fraternal or benevolent associations; and

6. Clubs promoting, developing, and maintaining cultural relations of people of the same nationality.

(b) Any corporation, partnership, or individual operating a club owning or leasing and maintaining any bona fide regular, standard golf course consisting of at least nine holes, with clubhouse, locker rooms, and attendant golf facilities and comprising in all at least 35 acres of land owned or leased by such club may be issued a license under s. 565.02(4); but failure of such club to maintain the golf course and golf facilities shall be grounds for revocation of the license.

(c) Any corporation, partnership, or individual operating a club owning or leasing and maintaining any bona fide tennis club or four-wall indoor racquetball club consisting of not fewer than 10 regulation-size tennis courts or 10 regulation-size four-wall indoor racquetball courts, or a combination of such courts totaling in the aggregate not fewer than 10 courts, or a combination of 8 such courts and exercise facilities which in square footage total not fewer than the aggregate square foot equivalent of 10 regulation-size courts with clubhouse facilities, pro shop, locker rooms, and attendant tennis or racquetball facilities, all located on a contiguous tract of land owned or leased by such club, may be issued a license under s. 565.02(4); but failure of such club to maintain such courts and facilities shall be grounds for revocation of any such license so issued. Any racquetball or tennis club which has been constructed and completed on or before July 1, 1980, and which contains the requisite number of courts of proper size and attendant facilities may be granted a license without the necessity of securing additional approval from the incorporated municipality or county in which the racquetball or tennis club facility is located. It is intended that this subsection be an exception to s. 562.45(2) preempting the zoning power of local government to the state only in instances involving tennis and racquetball clubs constructed and completed on or before July 1, 1980. Nothing in this paragraph, however, shall be construed to limit the power of incorporated municipalities or counties to enact ordinances regulating hours of business and prescribing sanitary regulations for such racquetball or tennis club facilities.

(d) Any corporation, partnership, or individual operating a club which owns or leases and which maintains any bona fide beach or cabana club consisting of beach facilities, swimming pool, locker rooms with facilities for at least 100 persons, and a restaurant with seats at tables for at least 100 persons, comprising in all an area of at least 5,000 square feet located on a contiguous tract of land of in excess of 1 acre may be issued a license under s. 565.02(4). The failure of such club to maintain the facilities shall be a ground for revocation of the license.

(8) In addition to any licenses that may be issued to restaurants under the provisions of this section, the division is authorized to issue special licenses to qualified applicants whose applications have been approved by the Inter-American Center Authority for use within the confines of the Inter-American Cultural and Trade Center; however, any such license issued pursuant to this subsection shall not permit the licensee to sell alcoholic beverages by the package for off-premises consumption.

(9) In addition to any licenses that may be issued under the provisions of this chapter, the division is authorized to issue special licenses to any county which has a population of at least 1 million persons

according to the latest federal census and which owns and operates airport facilities pursuant to chapters 125 and 332, for transfer to qualified applicants who have secured approval from the board of county commissioners of such county for use within the confines of such airport facilities. Such licenses shall not be valid in any location beyond the confines of the terminal facilities of the airport. In the event of expiration or revocation of such licenses, such licenses shall revert to the board of county commissioners automatically, by operation of law. However, no special license issued pursuant to this subsection shall permit the county or its transferee to sell alcoholic beverages by the package for off-premises consumption.

(10) In addition to any licenses that may be issued under the provisions of this chapter, the division is authorized to issue a special license to any marketing association of horse breeders organized under the laws of the state. Such license shall be applicable only in and for facilities used by the association for public auction of its products. No license issued pursuant to this subsection shall permit the licensee to sell alcoholic beverages by the package for off-premises consumption. The provisions of this subsection do not preclude any cooperative marketing association of horse breeders from holding a license issued pursuant to any other provision of this chapter.

(11) In addition to any licenses that may be issued under the provisions of this chapter, the division is authorized to issue a special license to historic American Legion Posts in Florida which were chartered prior to September 16, 1919, the date on which the United States Congress issued the National Charter for the American Legion. Any holder of a license issued pursuant to this subsection shall, at its option, be permitted to sell alcoholic beverages to resident guests as well as members and nonresident guests for consumption on the premises only. Revenue from the sale of such alcoholic beverages must be used to operate, maintain, or improve said American Legion Post facilities, grounds, or activities and to maintain an emergency fund not to exceed the costs of operation of the American Legion Post for the prior calendar year. Any remaining revenue from the sale of alcoholic beverages shall be donated to local nonprofit charitable organizations on an annual basis. Posts exercising their option under this subsection shall pay an annual license fee of \$500. This section shall not apply to any county which has held an election under s. 567.01 and whose electors have voted to prohibit the sale of alcoholic beverages for consumption on the licensed premises.

(12)(a) In addition to any other licenses issued under the provisions of this chapter, the division is authorized to issue a special license to a person or to an organization for the purpose of authorizing:

1. A sale pursuant to a levy and execution;
2. A sale by an insurance company in possession of alcoholic beverages;
3. A bankruptcy sale;
4. A sale resulting from a license suspension or revocation;
5. A sale of damaged goods by a common carrier;
6. A sale by a bona fide wine collector; or
7. A sale of packaged alcoholic beverages pursuant to part V of chapter 679.

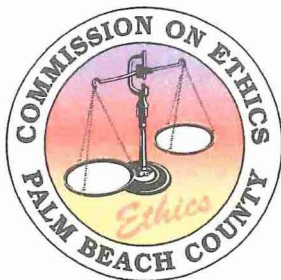
(b) A special license shall be issued under this subsection upon filing an application at the district office and paying a \$25 fee. Such fee shall be deposited in the Alcoholic Beverages and Tobacco Trust Fund.

(c) A special license is valid for 3 days after the time of its effective date and time as set by the division. A license issued pursuant to this subsection does not permit the licensee to sell alcoholic beverages for consumption on the premises.

(d) A distributor may purchase packaged alcoholic beverages at any sale specified in paragraph (a).

(13) Notwithstanding any other provision of law, any license to sell or serve alcoholic beverages issued to a port authority, as defined in s. [315.02](#), entitles that port authority, or the lessee or lessees which it may choose, to sell and serve alcoholic beverages at any terminal within the port jurisdictional boundaries upon annual payment to the division of an annual fee equivalent to the annual license fee for each sales or service location. However, any lessees chosen by the port authority shall meet the criteria for licensure for sales and service of alcoholic beverages.

History.—s. 2, ch. 16774, 1935; CGL 1936 Supp. 4151(228); s. 2, ch. 23746, 1947; s. 7, ch. 25359, 1949; s. 1, ch. 28113, s. 1, ch. 28117, 1953; s. 4, ch. 29786, s. 1, ch. 29829, s. 1, ch. 29978, 1955; s. 24, ch. 57-1; s. 1, ch. 57-299; s. 17, ch. 57-420; ss. 1, 2, ch. 57-773; s. 1, ch. 57-837; s. 1, ch. 57-1991; s. 1, ch. 59-370; s. 2, ch. 61-219; ss. 1, 2, 4, ch. 61-300; s. 1, ch. 61-439; s. 1, ch. 67-173; ss. 16, 35, ch. 69-106; s. 1, ch. 71-238; s. 1, ch. 72-61; s. 1, ch. 72-83; s. 1, ch. 72-230; s. 1, ch. 72-260; s. 1, ch. 73-366; s. 1, ch. 73-367; ss. 1, 2, 3, ch. 76-2; s. 1, ch. 76-242; s. 5, ch. 77-471; s. 1, ch. 77-474; s. 1, ch. 78-103; s. 1, ch. 80-232; s. 2, ch. 80-339; s. 4, ch. 81-158; s. 1, ch. 84-95; ss. 1, 3, ch. 84-286; s. 6, ch. 85-161; s. 69, ch. 86-163; s. 2, ch. 86-228; ss. 29, 30, ch. 86-269; s. 3, ch. 87-63; s. 13, ch. 88-308; s. 1, ch. 88-404; s. 1, ch. 89-230; s. 1, ch. 89-248; s. 2, ch. 89-361; s. 9, ch. 90-17; ss. 1, 8, ch. 91-60; s. 3, ch. 92-176; s. 2, ch. 92-205; s. 3, ch. 93-134; s. 842, ch. 97-103; s. 2, ch. 99-216; s. 68, ch. 2000-154; s. 6, ch. 2000-191.



Palm Beach County Commission on Ethics

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Alan S. Johnson

June 8, 2012

Councilman Johnny Greene
Wellington Village Council
14000 Greenbriar Blvd.
Wellington, FL 33414

Re: RQO 12-045
Gift Law/Personal Friend

Dear Councilman Greene,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting held on June 7, 2012.

YOU ASKED in your email submission dated May 21, 2012, whether you may accept temporary housing from a personal friend who is a director of a civic organization that employs a lobbyist compensated by a third party, and if so, whether the value of the housing is reportable under the Palm Beach County Code of Ethics (the Code).

IN SUM, where a personal friend/donor is a director of a civic organization, and the organization is a *principal* or *employer* of a lobbyist, you are prohibited from accepting a gift from your friend/donor of a value in excess of \$100, annually in the aggregate.

Under the Code, elected officials, identified by state law as reporting individuals, are only required to report gifts pursuant to state law and file a copy of the report with the Palm Beach County Commission on Ethics (COE).

At all times, you may not use your official position corruptly to secure a benefit for the donor of a gift, or otherwise use your official position to obtain for yourself a financial benefit, not available to similarly situated members of the public. *"Corruptly", means done with a wrongful intent and for the purpose of obtaining, compensating or receiving compensation for, any benefit* resulting from some act or omission which is inconsistent with the proper performance of your public duties.

THE FACTS as we understand them are as follows:

You are a newly elected Councilman for the Village of Wellington (the Village). You have been offered temporary housing from a close, personal friend who you have known for 30 years. You frequently socialize together, he is a frequent guest at your current home and your close friendship is publicly known. The property will not become your permanent or primary residence. The temporary arrangement will be for no more than 90 days.

Your friend (the Donor) is not a vendor or lobbyist who does business with the Village. He is a retired businessman who currently owns a restaurant located within the Village. Nor do you have any business relationship with the donor or serve on any board, committee or commission together.

The Donor is a member of the board of directors of a civic organization that does engage in lobbying activity within the Village. The civic organization, Wellington Equestrian Preservation Alliance (the Alliance), is active in publicly advocating positions regarding the development of an area in the Village known as the Equestrian Preserve.

2633 Vista Parkway, West Palm Beach, FL 33411 561.233.0724 FAX: 561.233.0735

Hotline: 877.766.5920 E-mail: ethics@palmbeachcountyethics.com

Website: palmbeachcountyethics.com

According to the facts you submitted, the Donor does not provide financial support to this organization and "strictly acts in an advisory capacity." However, the Executive Director of the Alliance (ED) was hired and paid through Solar Sports Systems, Inc. (Solar) and does engage in lobbying activity for Solar within the Village. He also lobbies the Village on behalf of the Alliance. While the ED is a paid lobbyist for Solar, you stated that he receives no compensation in his capacity as the ED of the Alliance. However, the president of the Alliance apparently has a significant ownership interest in Solar.

THE LEGAL BASIS for this opinion is found in the following relevant sections of the revised Palm Beach County Commission on Ethics Ordinance and Code of Ethics, which took effect on June 1, 2011:

A public official may not use his or her official position or office to financially benefit him or herself, in a manner that will result in a special financial benefit not shared with similarly situated members of the general public, or otherwise corruptly obtain a special benefit for anyone if done with a wrongful intent, inconsistent with the proper performance of his or her public duties.¹ Additionally, an official may not accept a gift of any value if given because of an official action taken or legal duty performed or violated.²

Section 2-444(a) prohibits an elected official or employee from accepting a gift valued in excess of \$100, *from a vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases* to his or her municipality. In determining the value of a gift, section 2-444(g) allows a recipient to consult §112.3148, Florida Statutes, and the Florida Administrative Code. Section 112.3148 states that lodging provided on consecutive days is considered a single gift and that lodging in a private residence is to be valued at the per diem rate as established in §112.061(6)(a), Florida Statutes. The state per diem lodging rate is currently \$44; therefore, the total value of a 90 day stay in a private residence would be \$3960. The value of the gift may be reduced by the Donee by compensating the Donor within 90 days.³

Section 2-444(d) states as follows:

For purposes of this section, a principal or employer of a lobbyist shall include any officer, partner or director of the principal entity, or any employee of a principal who is not an officer, partner or director, provided that the employee knows or should know with the exercise of reasonable care that the principal employs a lobbyist.

Therefore, since the Alliance is a principal or employer of a lobbyist, you may not accept a prohibited gift from a director of the Alliance. Lobbying means seeking to influence a decision of an item which may foreseeably be presented for consideration to an advisory board or a local governing body.

Section 2-442 defines lobbyist as follows:

Lobbyist shall mean any person who is employed and receives payment, or who contracts for economic consideration, for the purpose of lobbying on behalf of a principal, and shall include an employee whose principal responsibility to the employer is overseeing the employer's various relationships with government or representing the employer in its contacts with government.

If the person lobbying on behalf of the Alliance receives compensation for that representation, from whatever source, that person is a lobbyist and Alliance is the principal under the Code. While an exception may exist where a person lobbies as an employee of the principal organization, it applies in circumstances where lobbying is not the principal responsibility of the employee to the employer. Here, the Solar lobbyist is also the ED of the Alliance and lobbies on behalf of the Alliance. Recent issues involving land use decisions in the Village have been the subject of significant lobbying activity. This opinion relies upon the facts and circumstances you have provided, based upon

¹ Article XIII, §2-443(b)

² §2-444(e)

³ §112.3148(7)(b), Florida Statutes.

your knowledge and belief. Considering the facts and relationships that exist between the Alliance, Solar, the Alliance ED and the President of the Alliance, the COE cannot opine as to whether the employer/employee exception applies without further investigation into the relationships involved. Should an inquiry be commenced or a complaint filed in the matter, the issue would be decided by the facts uncovered through an inquiry or investigation. Due to these relationships and the potential appearance of impropriety, should you choose to accept the gift, you must take great care in relying on the employer/employee exception. It should be noted that the Code also prohibits a principal or employer of a lobbyist from knowingly giving a gift valued in excess of \$100, annually in the aggregate, to a person they know is an elected official of the municipality lobbied.⁴ The Donor, as a Director of the Alliance, is subject to this prohibition if the Alliance is the principal of a lobbyist.

As an elected official, you are required to *report gifts pursuant to state law... in the manner provided by Florida Statutes, §112.3148.*⁵ No other reporting requirements or exemptions apply under the Code. A copy of the state report must be submitted to the Palm Beach County Commission on Ethics.

IN SUMMARY, as an elected official, you may not accept a gift valued in excess of \$100, annually in the aggregate, from a director of an organization that employs a lobbyist who lobbies your municipality.

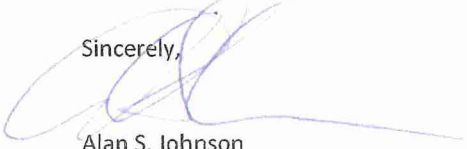
As a state reporting individual, the Code does not impose additional requirements other than the submission of a copy of any state required report to the COE.

In all instances, you may not accept a gift of any value in exchange for the past, present or future performance of an official act or a legal duty. Nor may you accept anything of value as a quid pro quo or otherwise corruptly misuse your office by giving someone a special benefit that is inconsistent with the proper performance of your duties.

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted. It is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at 561-233-0724 if I can be of any further assistance in this matter.

Sincerely,



Alan S. Johnson
Executive Director

ASJ/gal

⁴ §2-443(a)(2) No lobbyist, vendor or principal or employer of a lobbyist that lobbies...a municipality shall knowingly give, directly or indirectly, any gift with a value greater than one hundred dollars (\$100) in the aggregate for the calendar year to a person who...is an official...of that municipality.

⁵ §2-444(f)(1)



Palm Beach County Commission on Ethics

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Executive Director

Alan S. Johnson

October 5, 2012

Jeffrey Kurtz, Attorney for The Village of Wellington
c/o The Law Offices of Glen J. Torcivia and Associates, P.A.
Northpoint Corporate Center
701 Northpoint Parkway, Suite 209
West Palm Beach, FL 33407-1950

Re: RQO 12-065
Misuse of Office/Voting Conflicts

Dear Mr. Kurtz,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting held on October 4, 2012.

YOU ASKED in your submission dated September 11, 2012 whether an ongoing conflict of interest exists based upon a friendship between Councilman John Greene and a village resident, Neal Hirsch. Councilman Greene previously requested an advisory opinion from the Commission on Ethics as to whether he was prohibited from accepting a gift of temporary residence from Mr. Hirsch, valued at \$2,948. Councilman Greene resided at a guest house on the Hirsch property between June 9, 2012 and August 15, 2012.

IN SUM, unless an official uses his or her office to corruptly secure a special benefit for another, there is no prohibition against voting or participating in matters involving a friend, where there is not a financial, fiduciary or familial relationship between the parties as provided in Art. XIII, §2-443(a)(1)-(7).

During his temporary residence at Mr. Hirsch's home, whether or not Councilman Greene and Mr. Hirsch may have been considered members of the same household, Councilman Greene did not vote or participate on any matter involving Mr. Hirsch. Temporary residence at the Hirsch property ended in mid-August. Based upon the facts and circumstances presented, there is no indication that Councilman Greene accepted a gift from Mr. Hirsch in exchange for a future vote, official action or legal duty to be performed.

THE FACTS as we understand them are as follows:

You are the village attorney for the Village of Wellington. In RQO 12-045, an elected official, Councilman John Greene, asked whether he was prohibited from accepting temporary housing from a personal friend, Mr. Neal Hirsch, who served as a director of a civic organization that employed a lobbyist compensated by a third party. The COE opined that Mr. Greene was prohibited from accepting temporary housing valued in excess of \$100 from his personal friend as long as Mr. Hirsch continued to serve on the board of directors of an organization that retained a lobbyist. As a result of the opinion, Mr. Hirsch resigned from the board thereby eliminating the conflict of interest and Councilman Greene accepted Mr. Hirsch's offer of temporary housing.

Councilman Greene stayed in Mr. Hirsch's guesthouse from June 9, 2012 through August 15, 2012. During this period, two matters came before the Village Council regarding property that Mr. Hirsch owns. The first issue was related to the master plan amendment contemplated by the proposed equestrian village project (EVP). As part of the application for the master plan amendment, the EVP developers proposed relocating an existing entrance to a

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property owned by Sperin, LLC, an entity controlled by Mr. Hirsch. The master plan amendment was approved by the council prior to Councilman Greene taking office. Councilman Greene voted to revoke that approval after taking office, but before he moved into Mr. Hirsch's guesthouse. The matter came before the council for discussion concerning pending litigation over the EVP on August 13 and 14. Mr. Greene did not participate in those discussions or vote on the matter.

The second issue involves Mr. Hirsch's home, Black Watch Farms. The property consists of several separate sections of land. The westernmost part of the property is owned by Chucker Holdings, Inc., an entity that Mr. Hirsch controls. This portion of Mr. Hirsch's property is subject to ongoing litigation over the potential reconsideration of a previously approved site plan and development permit. It is alleged that Mr. Hirsch and his companies did not consent to the application of the adjoining land owners for a change to the site plan. Mr. Hirsch contends that the change materially altered the amount of frontage on his land and the potential future development of his property into three independent lots. This matter was submitted by staff to the Council for discussion at the August 13th and 14th meetings. Mr. Greene did not participate in those discussions and did not vote on the matter. Mr. Hirsch has not publicly appeared before the Council or any other board on these issues. Chucker Holdings, Inc. has retained council to represent its interest in the pending litigation, settlement discussions and an October 3, 2012 quasi judicial 5.1.15 Hearing before the Wellington Planning, Zoning and Adjustment Board.¹

It is likely that these issues and perhaps others may come before the Village Council for discussion and possible action. As mentioned above, Councilman Greene moved out of Mr. Hirsch's guesthouse on August 15th. It should also be noted that the issue regarding Chucker Holdings, Inc. and subsequent potential litigation did not arise until after June 9, 2012, when Councilman Greene was already a temporary resident at the Hirsch property.

THE LEGAL BASIS for this opinion is found in the following relevant sections of the revised Palm Beach County Commission on Ethics Ordinance and Code of Ethics, which took effect on June 1, 2011:

§2-443(a) Misuse of public office or employment. An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, for any of the following persons or entities:

- (1) Himself or herself;
- (2) His or her spouse or domestic partner, household member or persons claimed as dependents on the official or employee's latest individual federal income tax return, or the employer or business of any of these people;
- (3) A sibling or step-sibling, child or step-child, parent or step-parent, niece or nephew, uncle or aunt, grandparent or grandchild of either himself or herself, or of his or her spouse or domestic partner, or the employer or business of any of these people;
- (4) An outside employer or business of his or hers, or of his or her spouse or domestic partner, or someone who is known to such official or employee to work for such outside employer or business;
- (5) A customer or client of the official or employee's outside employer or business;
- (6) A substantial debtor or creditor of his or hers, or of his or her spouse or domestic partner- "substantial for these purposes shall mean at least ten thousand dollars (\$10,000) and shall not include forms of indebtedness, such as a mortgage and note, or a loan between the official or employee and a financial institution;
- (7) A civic group, union, social, charitable, or religious organization, or other not for profit organization of which he or she (or his or her spouse or domestic partner) is an officer or director.

¹ Palm Beach County Lobbyist Registration Ordinance, §2-353 Registration and expenditures(c)(2) Registration exceptions.

Section 2-443(a) prohibits elected officials from using their official position to take or fail to take any action if they know or should know with the exercise of reasonable care that the action would result in a special financial benefit not shared with similarly situated members of the general public, for certain entities or persons including themselves or a member of their household. Section 2-443(c) *Disclosure of voting conflicts*, similarly requires an advisory board member to abstain and not participate in any matter coming before his or her board which would result in a special financial benefit, not shared with similarly situated members of the general public, to themselves or a member of their household.

A household member is defined in §2-442 as anyone whose primary residence is the same as the official or employee's, not including renters or live-in household staff.² Councilman Greene was a temporary guest of Mr. Hirsch. Councilman Greene lived in Mr. Hirsch's home for less than 90 days, did not receive mail at Mr. Hirsch's home, or change his driver's license or voting registration to Mr. Hirsch's address. Based upon these facts and circumstances, Councilman Greene and Mr. Hirsch were not members of the same household as defined by the Code. However, whether or not Councilman Greene could be categorized as a member of Mr. Hirsch's household at one point in time, he is no longer residing at the Hirsch property, having moved out on August 15, 2012. Accordingly, for the purpose of the misuse of office and voting conflict sections of the code, Councilman Greene is not prohibited from voting on matters involving Mr. Hirsch's property or businesses.

That being said, Councilman Greene must keep in mind that §2-443(b) *Corrupt misuse of official position* prohibits public officials from using their official position to corruptly secure or attempt to secure a special privilege, benefit or exemption for him or herself or anyone else. As defined by the Code, corruptly means done with a wrongful intent and for the purpose of obtaining a special benefit for any person, resulting from some act, such as voting, which is inconsistent with the proper performance of his or her public duties. Furthermore and in all instances, elected officials are strictly prohibited from accepting a gift of any value in exchange for the past, present or future performance of an official act or a legal duty.³

As an elected official who may in the future vote on matters resulting in a benefit to Mr. Hirsch, Councilman Greene must take great care not to use his official position to secure a special benefit for Mr. Hirsch, or any other person or entity, in a manner inconsistent with the proper performance of his public duty.⁴ Whether or not a corrupt misuse has occurred will be based upon the facts and circumstances presented. Because there is no prohibited conflict of interest under §2-443(a) under the facts you have presented, and providing there are no facts or circumstances to indicate a corrupt misuse of office or quid pro quo, Councilman Greene is not prohibited by the Code from voting on matters that may affect Mr. Hirsch, his businesses or other associated entities. Moreover, depending on the facts and circumstances presented by each future vote, Councilman Greene may be required by §286.012, Florida Statutes, to vote on matters where there is no evidence of a financial conflict or other misuse of office.⁵

IN SUMMARY, based upon the facts and circumstances submitted, the Code does not prohibit Councilman Greene from voting on matters that may result in a financial benefit to his personal friend Mr. Hirsch, so long as he does not use his official position corruptly to secure a special benefit for Mr. Hirsch, or otherwise use his official position to obtain for himself a financial benefit, not available to similarly situated members of the public. "*Corruptly*", means done with a wrongful intent and for the purpose of obtaining, compensating or receiving compensation for,

² §2-442 Household Member includes anyone whose primary residence is in the official or employee's home, including non-relatives who are not rent payers or employees of the head of household.

³ §2-444 (e). Gift Law

⁴ RQO 10-013 (For the purpose of ordinance construction, the commission finds that a financial benefit includes either a private gain or loss).

⁵ 286.012 *Voting requirement at meetings of governmental bodies.* - No member of any state, county, or municipal governmental board, commission, or agency who is present at any meeting of any such body at which an official decision, ruling, or other official act is to be taken or adopted may abstain from voting in regard to any such decision, ruling, or act; and a vote shall be recorded or counted for each such member present, except when, with respect to any such member, there is, or appears to be, a possible conflict of interest under the provisions of s. 112.311, s. 112.313, or s. 112.3143. In such cases, said member shall comply with the disclosure requirements of s. 112.3143.

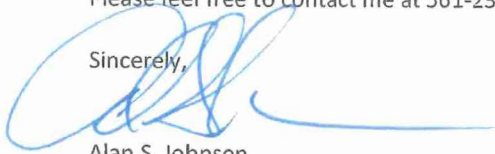
any benefit resulting from some act or omission which is inconsistent with the proper performance of his public duties.

Additionally, a gift may not be solicited or accepted as a *quid pro quo* for official action, special consideration or in exchange for the past, present or future performance of an official act or legal duty.

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted. It is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at 561-233-0724 if I can be of any further assistance in this matter.

Sincerely,



Alan S. Johnson,
Executive Director

ASJ/mcr/gal



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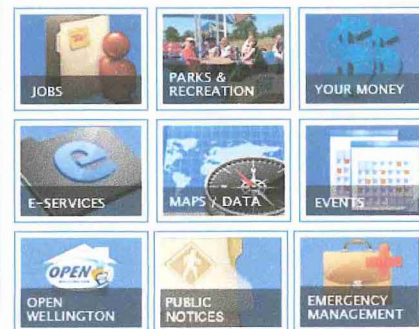
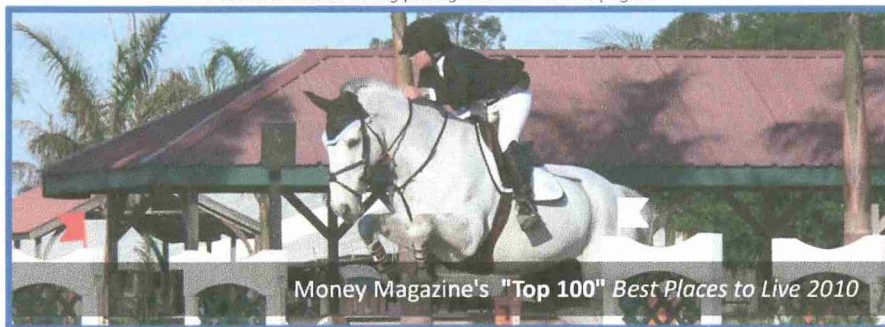
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rmargolis@wellingtonfl.gov

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(561) 791-4000

hcoates@wellingtonfl.gov

[Bio](#)

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(561) 791-4000

mwillhite@wellingtonfl.gov

[Bio](#)

Councilwoman, [Anne Gerwig](#)

(561) 791-4000

agerwig@wellingtonfl.gov

[Bio](#)

Councilman, [John Greene](#)

(561) 791-4000

jgreene@wellingtonfl.gov

[Bio](#)

Assistant to the Council, Kathy Adler

(561) 791-4146

kadler@wellingtonfl.gov

A Message from the City Council

Our residents elected us to preserve and enhance the quality of life that makes Wellington *A Great Hometown*.

Vision

A Great Hometown: Great Neighborhoods, Great Schools and Great Parks.

Mission

To provide high quality services that creates economic, environmental and social sustainability for residents.

Goals

- Neighborhood Renaissance
- Respecting the Environment
- Protecting Our Investment
- Economic Development
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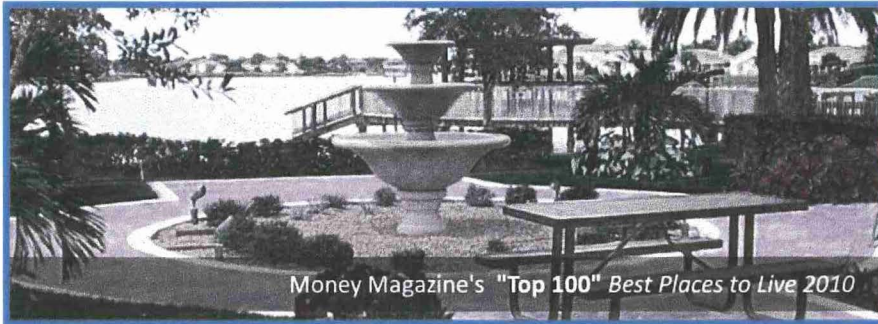
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Vice Mayor Howard K. Coates, Jr.

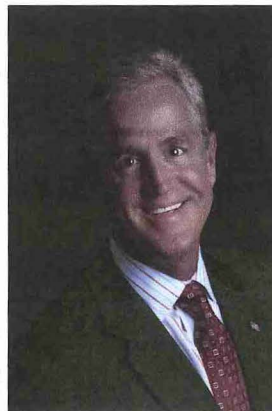
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Councilman

jgreene@wellingtonfl.gov

John Greene and his wife, Dana, have lived in Wellington since 2001. They have three children, Mitchell, Melanie and Ryan. Originally from New York City, John was raised in Saint Louis. He attended Laude High Scholl before graduating from Webster University with a degree in Business Administration.

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John has a broad background working in the private sector over the past 25 years. John has been active in the community and has served on various boards and committees both personally and professionally.

John is determined to work hard for the Village of Wellington and he brings a fresh perspective to the village council. He is committed to protecting our unique quality of life for each and every resident.



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Name & Address					
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Detail by Entity Name					
<u>Florida Limited Liability Company</u>					
OLI'S RESTAURANT GROUP, LLC					
<u>Filing Information</u>					
Document Number L11000045315					
FEI/EIN Number APPLIED					
Date Filed 04/15/2011					
State FL					
Status ACTIVE					
<u>Principal Address</u>					
423 WRANGLEWOOD DR WELLINGTON FL 33414 US					
<u>Mailing Address</u>					
423 WRANGLEWOOD DR WELLINGTON FL 33414 US					
<u>Registered Agent Name & Address</u>					
MIAMI CORPORATE SYSTEMS, LLC 283 CATALONIA AVE SECOND FLOOR CORAL GABLES FL 33134 US					
<u>Manager/Member Detail</u>					
<u>Name & Address</u>					
Title MGR					
PARFITT, DUSTIN 423 WRANGLEWOOD DR WELLINGTON FL 33414 US					
Title MGR					
GANDO, JUAN 423 WRANGLEWOOD DR WELLINGTON FL 33414 US					
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Report Year Filed Date					
2012 05/01/2012					
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Tallahassee, Florida 32317-5709

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Deputy Executive Director

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October 2, 2012

Jeffrey S. Kurtz, Esquire

Attorney for the Village of Wellington

Glen J. Torcivia and Associates, P.A.

Via Email

Jeff@torcivialaw.com

Re: Village of Wellington Councilmember John Green

Dear Mr. Kurtz:

This letter is the response to your inquiry dated September 11¹ sent in behalf Village of Wellington Councilmember John Green.

The voting conflicts law contained within the State Code of Ethics (Part III, Chapter 112, Florida Statutes) that is applicable to local, elective public officers such as municipal governing board members (e.g., Village Councilmembers) is Section 112.3143(3)(a), Florida Statutes, which provides:

VOTING CONFLICTS.—No county, municipal, or other local public officer shall vote in an official capacity upon any measure which would inure to his or her special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, other than an agency as defined in s. 112.312(2); or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer. Such public officer shall, prior to the vote being taken, publicly state to the assembly the nature of the officer's interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a

¹ The response addresses the factual scenario contained in your 4-page letter dated September 11, 2012.

memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes.

This statute requires declaration of interest, abstention from voting, and timely filing of a memorandum (CE Form 8B), regarding measures/votes of the collegial body of which an officer is a member, if the measure would inure to the special private gain or loss of the officer or to that of other persons or entities standing in a relationship to the officer as listed in the statute. Inasmuch as your inquiry does not indicate that measures affecting Mr. Hirsch's properties also would cause special private gain or loss to Councilmember Green, and inasmuch as "good friend" (the only status between Mr. Hirsch and Councilmember Green set forth in your inquiry) is not a relationship listed in Section 112.3143(3)(a),² it does not appear that the Councilmember will be presented with a voting conflict as to measures affecting Mr. Hirsch's properties.³

Regarding the gifts law codified in Section 112.3148, Florida Statutes, the lodging in Mr. Hirsch's guest house enjoyed by Councilmember Green appears to be a "gift"; see Section 112.312(12)(a)2, Florida Statutes, and Section 112.3148(7)(e), Florida Statutes. Thus, this gift, having a value in excess of \$100, apparently is required to be reported under Section 112.3148(8), Florida Statutes, on CE Form 9 (Quarterly Gift Disclosure). The gift is not prohibited by Section 112.3148, Florida Statutes, unless, when accepted, its donor was a "lobbyist," a partner, firm, employer, or principal of a lobbyist, a political committee, or a committee of continuous existence; see Sections 112.3148(4) and 112.3148 (2)(b), Florida Statutes.⁴

Also, Section 112.313(4), Florida Statutes, provides:

UNAUTHORIZED COMPENSATION.—No public officer, employee of an agency, or local government attorney or his or her spouse or minor child shall, at any time, accept any compensation, payment, or thing of value when such public officer, employee, or local government attorney knows, or, with the

² "Relative," for purposes of Section 112.3143(3)(a), is defined in Section 112.3143(1)(b), Florida Statutes. This definition does not include persons who merely "hav[e] the same legal residence," assuming arguendo that this would be the status of one residing temporarily in another's guest house; this nontraditional definition, found in Section 112.312(21), Florida Statutes, applies to some other provisions of the Code of Ethics, but not to Section 112.3143. Section 112.3143(1)(b) provides:

"Relative" means any father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, or daughter-in-law.

³ "Donor of a gift to a public officer" also is not a relationship listed in Section 112.3143(3)(a). Gift issues are addressed by other provisions of the Code of Ethics.

⁴ Statutes cited herein can be read at www.ethics.state.fl.us. Go to the website, go to Ethics Laws, go to Part III, Chapter 112, and go to the particular statute.

Jeffrey S. Kurtz, Esquire
October 2, 2012
Page 3

exercise of reasonable care, should know, that it was given to influence a vote or other action in which the officer, employee, or local government attorney was expected to participate in his or her official capacity.

It is difficult to opine on applicability of this statute in the context of things past, given the evidential nuances of fact which can bear on a particular situation; thus, no view is given herein. However, in the instant matter, the very long and good friendship represented between Mr. Hirsch and the Councilmember seemingly would weigh against a view that the guest house lodging was given with the intent to influence the Councilmember's vote or decisionmaking regarding issues of interest to Mr. Hirsch. Nevertheless, as mentioned above, this past receipt of lodging does not create a voting conflict for the Councilmember under Section 112.3143(3)(a).

If I have misunderstood any material facts of your inquiry, or if you have any questions, please telephone me. Note that this response does not address any local (Palm Beach County) ethics provisions. Please let me know by email that you received this response to your inquiry.

Sincerely,

C. Christopher Anderson III

C. Christopher Anderson, III
General Counsel and
Deputy Executive Director



**A Great Hometown...
Let Us Show You!**

REGULAR MEETING OF THE WELLINGTON VILLAGE COUNCIL

**Bob Margolis, Mayor
Howard K. Coates, Jr., Vice Mayor
Matt Willhite, Councilman
Anne Gerwig, Councilwoman
John Greene, Councilman**

**Wellington City Hall
12300 Forest Hill Boulevard
Wellington, Florida**

**TUESDAY, AUGUST 28, 2012
7:00 PM**

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE

3. INVOCATION

Deacon Al Payne, St. These de Lisieux Catholic Church, Wellington

4. APPROVAL OF AGENDA

5. PRESENTATIONS AND PROCLAMATIONS

A. RECOGNITION OF THE WELLINGTON LITTLE LEAGUE 9-10 DISTRICT 7 CHAMPIONS

Recognition of the Wellington Little League 9-10 District 7 International Champions.

**B. RECOGNITION OF THE WELLINGTON LIFEGUARDS FOR THEIR SECOND
CONSECUTIVE CHAMPIONSHIP WIN**

Recognition of the Wellington Lifeguards in their second consecutive overall win at the Palm Beaches-Treasure Coast Lifeguard competition.

**C. US FIELD HOCKEY ASSOCIATION ANNUAL NATIONAL HOCKEY FESTIVAL CO-
SPONSORSHIP**

Council support and sponsorship of the US Field Hockey Association Annual National Hockey Festival and authorization for Manager to execute sponsorship agreement.

6. CONSENT AGENDA

A. RESOLUTION R2012-54 (MODIFICATIONS TO EXISTING SPEED HUMP POLICY)

A RESOLUTION REPEALING RESOLUTION R2007-36 OF THE VILLAGE COUNCIL OF THE VILLAGE OF WELLINGTON, FLORIDA AND ADOPTING A NEW POLICY FOR THE INSTALLATION OF SPEED HUMPS ON CERTAIN TYPES OF RESIDENTIAL STREETS AS A TRAFFIC CONTROL MEASURE WITHIN THE VILLAGE OF WELLINGTON; AND PROVIDING AN EFFECTIVE DATE.

Approval of Resolution R2012-54 repealing the speed hump policy adopted in Resolution R2007-36 and adopting a new policy to include language applicable to public and private roads within subdivisions.

B. AUTHORIZATION TO AWARD THE CONTRACTS FOR ANNUAL ASPHALT MILLING AND RESURFACING

Authorization to award the contracts for annual asphalt milling and resurfacing, pathways and sealcoating, Sections A, B, and C to multiple vendors.

C. RESOLUTION R2012-52 (CONTRACT WITH THE FLORIDA DEPARTMENT OF CORRECTIONS FOR THE PROVISION OF INMATE LABOR FOR THE MAINTENANCE OF THE WELLINGTON ENVIRONMENTAL PRESERVE AT THE MARJORY STONEMAN DOUGLAS EVERGLADES HABITAT)

A RESOLUTION OF WELLINGTON, FLORIDA'S COUNCIL APPROVING AND AUTHORIZING THE MAYOR AND CLERK TO EXECUTE THE CONTRACT WITH THE FLORIDA DEPARTMENT OF CORRECTIONS TO PROVIDE INMATE LABOR IN WORK PROGRAMS WITHIN THE WELLINGTON ENVIRONMENTAL PRESERVE AT THE MARJORY STONEMAN DOUGLAS EVERGLADES HABITAT; AND PROVIDING AN EFFECTIVE DATE.

Approval of the Contract with the Florida Department of Corrections for the provision of inmate labor for the maintenance of the Wellington Environmental Preserve.

D. AUTHORIZATION TO AWARD A CONTRACT TO PROVIDE PROPERTY, CASUALTY AND WORKER'S COMPENSATION INSURANCE

Authorization to award a contract to provide property, casualty and worker's compensation insurance to The Florida League of Cities (Florida Municipal Insurance Trust) at an annual cost of \$567,810, maintaining existing deductible of \$25,000.

E. AUTHORIZATION TO AWARD A CONTRACT TO PROVIDE LANDSCAPE MAINTENANCE SERVICES TO ALL EQUESTRIAN TRAILS, CANAL BANKS AND CANAL SLOPES VILLAGE-WIDE

Authorization to award a contract to provide Landscape Maintenance Services to all equestrian trails, canal banks and canal slopes Village-wide to OrchidMan Landscape Artisans, Corp at a cost of \$129,776.37 a year.

F. REVISIONS TO PARAGRAPH REGARDING "SELECTION COMMITTEE" IN PURCHASING MANUAL

Approval of language relating to "Selection Committee" so that the Village Manager can amend the Village's Purchasing Policy accordingly.

G. RESOLUTION R2012-48 (CAMDEN COURT AT WELLINGTON GREEN PLAT)

A RESOLUTION OF WELLINGTON, FLORIDA'S COUNCIL ACCEPTING AND APPROVING THE CAMDEN COURT AT WELLINGTON GREEN PLAT FOR A 17.64 ACRE PARCEL LYING IN SECTION 13, TOWNSHIP 44 SOUTH, RANGE 41 EAST, VILLAGE OF WELLINGTON, PALM BEACH COUNTY, FLORIDA, BEING A REPLAT OF A PORTION OF PARCEL 1, WELLINGTON GREEN, A MUPD/PUD, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 87, PAGES 81 - 90, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

Approval of Resolution R2012-48 accepting and approving the Camden Court at Wellington Green Plat.

7. PUBLIC HEARINGS

A. RESOLUTION R2012-47 (THE GRILLE CONDITIONAL USE)

A RESOLUTION OF WELLINGTON, FLORIDA'S COUNCIL, APPROVING PETITION 2012-017 CU2, THE CONDITIONAL USE APPLICATION OF THE GRILLE RESTAURANT (COCKTAIL LOUNGE) TO ALLOW OPERATION WITH A 4COP ALCOHOL LICENSE WITHIN 250 FEET OF A RESIDENTIAL DISTRICT IN A PLANNED DEVELOPMENT AND A CONDITIONAL USE TO ALLOW EXTENDED HOURS OF OPERATION WITHIN 300 FEET OF RESIDENTIAL HOUSING MONDAY – WEDNESDAY FROM 11:00 PM TO 12:00 AM AND THURSDAY – SUNDAY FROM 11:00 PM TO 2:00 AM LOCATED AT 12300 SOUTH SHORE BOULEVARD; PROVIDING CONFLICTS CLAUSE; AND PROVIDING SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

APPROVAL OF PETITION 2012-017 CU2, THE CONDITIONAL USE APPLICATION OF THE GRILLE RESTAURANT LOCATED AT 12300 SOUTH SHORE BOULEVARD TO OPERATE AS A COCKTAIL LOUNGE WITH A 4COP LIQUOR LICENSE WITHIN 250 FEET OF A RESIDENTIAL DISTRICT IN A PLANNED DEVELOPMENT DISTRICT AND A CONDITIONAL USE TO ALLOW EXTENDED HOURS OF OPERATION WITHIN 300 FEET OF RESIDENTIAL HOUSING MONDAY – WEDNESDAY FROM 11:00 PM TO 12:00 AM AND THURSDAY – SUNDAY FROM 11:00 PM TO 2:00 AM WITH THE CONDITIONS PRESENTED IN THE RECOMMENDATION.

8. REGULAR AGENDA

A. RESOLUTION R2012-46 (PALM BEACH COUNTY SHERIFF'S OFFICE LAW ENFORCEMENT SERVICES PLAN FOR FY13)

A RESOLUTION OF WELLINGTON, FLORIDA'S COUNCIL APPROVING THE LAW ENFORCEMENT SERVICES PLAN FOR FISCAL YEAR 2012-13; AND PROVIDING AN EFFECTIVE DATE.

Approval of the Palm Beach County Sheriff's Office Law Enforcement Services Plan for FY13.

B. RESOLUTION R2012-50 (PALM BEACH COUNTY SHERIFF'S OFFICE FY2013 BUDGET AND CONTRACT)

A RESOLUTION OF WELLINGTON, FLORIDA'S COUNCIL APPROVING AND AUTHORIZING THE MAYOR AND CLERK TO EXECUTE THE FIRST ADDENDUM TO THE LAW ENFORCEMENT SERVICES AGREEMENT WITH THE PALM BEACH COUNTY SHERIFF'S OFFICE FOR LAW ENFORCEMENT SERVICES; AND PROVIDING AN EFFECTIVE DATE.

Approval of Resolution R2012-50 for the Palm Beach County Sheriff's Office FY2013 budget and contract.

C. DISCUSSION AND DIRECTION REGARDING THE CONTINUED CONTRACTING OF LEGAL SERVICES VERSUS IN-HOUSE LEGAL SERVICES

Direction regarding the continued contracting of legal services versus bringing legal services in-house.

- 9. PUBLIC FORUM**
- 10. ATTORNEY'S REPORT**
- 11. MANAGER'S REPORT & UPDATES**
- 12. COUNCIL REPORTS**
- 13. ADJOURNMENT**

NOTICE

If a person decides to appeal any decision made by the Village Council with respect to any matter considered at this meeting, you will need a record of the proceedings, and you may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. (The above notice is required by State Law. Anyone desiring a verbatim transcript shall have the responsibility, at his own cost, to arrange for the transcript).

Pursuant to the provision of the Americans With Disabilities Act: any person requiring special accommodations to participate in these meetings, because of a disability or physical impairment, should contact the Village Manager's Office (561) 791-4000 at least five calendar days prior to the Hearing.

7. A

**WELLINGTON VILLAGE COUNCIL
AGENDA ITEM SUMMARY****AGENDA ITEM NAME: RESOLUTION R2012-47 (THE GRILLE CONDITIONAL USE)**

A RESOLUTION OF WELLINGTON, FLORIDA'S COUNCIL, APPROVING PETITION 2012-017 CU2, THE CONDITIONAL USE APPLICATION OF THE GRILLE RESTAURANT (COCKTAIL LOUNGE) TO ALLOW OPERATION WITH A 4COP ALCOHOL LICENSE WITHIN 250 FEET OF A RESIDENTIAL DISTRICT IN A PLANNED DEVELOPMENT AND A CONDITIONAL USE TO ALLOW EXTENDED HOURS OF OPERATION WITHIN 300 FEET OF RESIDENTIAL HOUSING MONDAY – WEDNESDAY FROM 11:00 PM TO 12:00 AM AND THURSDAY – SUNDAY FROM 11:00 PM TO 2:00 AM LOCATED AT 12300 SOUTH SHORE BOULEVARD; PROVIDING CONFLICTS CLAUSE; AND PROVIDING SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

ACTION REQUESTED: Discussion ☐ Approval ☒

**BUDGET AMENDMENT
REQUIRED:** Yes ☐ No ☒ See Below ☐

PUBLIC HEARING: Yes ☒ No ☐ **QUASI-JUDICIAL** ☒

FIRST READING ☒

SECOND READING ☐

REQUEST: APPROVAL OF PETITION 2012-017 CU2, THE CONDITIONAL USE APPLICATION OF THE GRILLE RESTAURANT LOCATED AT 12300 SOUTH SHORE BOULEVARD TO OPERATE AS A COCKTAIL LOUNGE WITH A 4COP LIQUOR LICENSE WITHIN 250 FEET OF A RESIDENTIAL DISTRICT IN A PLANNED DEVELOPMENT DISTRICT AND A CONDITIONAL USE TO ALLOW EXTENDED HOURS OF OPERATION WITHIN 300 FEET OF RESIDENTIAL HOUSING MONDAY – WEDNESDAY FROM 11:00 PM TO 12:00 AM AND THURSDAY – SUNDAY FROM 11:00 PM TO 2:00 AM WITH THE CONDITIONS PRESENTED IN THE RECOMMENDATION.

EXPLANATION: The Grille Restaurant is located at 12300 South Shore Boulevard within the commercial development known as Mizner Place. Mizner Place is a 4.75-acre development consisting of three buildings. The Grille Restaurant is in the center building on the first floor adjacent to the courtyard. Mizner Place is bordered on the north by the Waterstone Apartment Complex, to the south across South Shore Boulevard is Hunters Chase residential development, to the east is Village Place and to the west is Solara Apartments.

The request is for a conditional use to operate as a cocktail lounge with a 4COP liquor license within 250 feet of a residential district in a planned development district and a conditional use to allow extended hours of operation within 300 feet of residential housing. Since the Grille is within these

required setbacks, the location and extension must be approved by Council in a development order. The following explains the land development regulations and the relevance to the request.

Section 6.4.4 "Supplementary Use Standards" in subsection 68 of Wellington's Land Development Regulations sets forth the standards for a cocktail lounge and differentiates a cocktail lounge from a restaurant. Unless approved as a Requested Use in a Planned Development District, a cocktail lounge use shall not be located within two hundred fifty (250) feet of a residential district, measured by drawing a straight line between the nearest point on the perimeter of the exterior wall or bay housing the proposed lounge to the nearest point on the property line of the residential district, nor within seven hundred fifty (750) feet of another cocktail lounge use, measured by drawing a straight line between the nearest point on the perimeter of the wall or bay of the proposed lounge to the nearest point on the existing lounge.

Cocktail Lounge means a use engaged in the preparation and retail sale of alcoholic beverages for consumption on the premises, including taverns, bars, lounges, and similar uses other than restaurants or alcohol sales for off-premises consumption. A cocktail lounge is distinct from a restaurant that sells alcohol. A cocktail lounge is not required to sell food. A restaurant qualifies for a "Consumption on Premises, Special Restaurant Exemption" (4COPSRX) pursuant to the State Beverage Law. Any restaurant may receive a 4COPSRX license provided it meets certain conditions detailed below. The State's Division of Alcoholic Beverages and Tobacco has specific requirements for the various types of liquor licenses.

The Division of Alcoholic Beverages and Tobacco defines the licenses as follows:

The 4COPSRX license allows you to sell beer, wine, and liquor for consumption in connection with a restaurant; consumption on premises only. May only have spirituous beverages (liquor) in quarts, fifths or miniatures. Must meet certain requirements as to the number of seats, square footage, etc. Sale of alcoholic beverage prohibited when food service not available. License cannot be moved to a new location. However, a restaurant must derive 51% of their revenue from food and non-alcoholic beverages to qualify for this special license. If this percentage cannot be met and maintained, the restaurant would not qualify for the special license and would then be required to obtain a 4COP license. [Reference: F.S. 561.20]

The 4COP license. Beer, Wine, and Liquor permit the sale by the drink for consumption on premises and package sales in sealed containers.

Currently the restaurant possesses a 4COPSRX liquor license which is permitted in the location. The restaurant does not require any separation from residential or from another restaurant. The restaurant owner is seeking approval for a 4COP Cocktail Lounge which does require 250 feet separation from residential district. The adjacent Waterstone Apartments are approximately 50 feet to the north and Palm Beach Polo Country Club Hunter's Chase is approximately 235 feet. Both are within the required 250 feet separation and require Council approval.

Their second request is for extended hours beyond 11:00 pm. The Land Development Regulations Sec. 6.8.2.F.1.b.vii. (f)(ii.) states Commercial uses within 300 feet of residential housing shall not commence business activities (including delivery and stocking operations) prior to 6:00 a.m. nor continue activities later than 11:00 p.m. unless extended by a development order approved by Council. The nearest structure of the Waterstone Apartment Complex is approximately 112 feet to the north and is within this required setback. Hunters Chase residential houses are approximately 356 feet to the south of the restaurant and does not meet the separation requirement. This separation is measured from building to building.

At their meeting of July 11, 2012, the Planning, Zoning and Adjustment Board recommended unanimous (6-0) approval of both requests with conditions. The conditions are enumerated in the proposed resolution. The Land Development Regulations require the request for the cocktail lounge location and the hours of operation extension to be approved by Council.

In addition to the staff report and resolution, supporting documentation including the application, previous approvals for Mizner Place, and a history of the code compliance actions for the Grille are provided in the agenda package for reference.

LEGAL SUFFICIENCY: Yes

FISCAL IMPACT: N/A

VILLAGE GOAL: Responsive Government

RECOMMENDATION: The Conditional Uses are recommended for approval based on the PZAB unanimous vote to approve the applicant's request for a 4COP Conditional Use cocktail lounge with the following conditions:

1. The business must operate in the same manner as a restaurant with a 4COPSRX liquor license consistent with Section 61A-3.0141 Special Restaurant Licenses, Florida Administrative Code, but not including Section 61A-3.0141(3)(a) (**Exhibit B**), for only the following provisions:
 - a. A qualifying restaurant with a service area occupying 2,500 square feet or more of floor space, not including any space contained in an uncovered or not permanently covered area adjacent to the premises;
 - b. Required square footage must be contiguous and under the management and control of a single licensed restaurant establishment;
 - c. Must have accommodations for the service and seating of 150 or more patrons at tables at one time; tables must be of adequate size to accommodate the service of full course meals in accordance with the number of chairs or other seating facilities provided at the table;
 - d. Full course meals must be available at all times when the restaurant is serving alcoholic beverages except alcoholic beverage service may continue until food service is completed to the final seating of restaurant patrons for full course meals. A full course meal as required must including salad or vegetable, entrée, beverage, and bread.
2. The restaurant must adhere to existing Wellington noise restrictions;
3. No outdoor entertainment without prejudice to allow them to seek further opportunities in the future;
4. The Conditional Use is non-transferable;
5. The owner must file an affidavit signed by the General Manager or owner, with backup documentation to the Village on June 1 of every year certifying compliance with all conditions of approval;

6. Failure to abide by the foregoing conditions will subject the applicant to code enforcement procedures which will include, but will not be limited to, monetary penalty and/or revocation of the Conditional Use for the cocktail lounge and extended hours of operation.

Staff's recommendation to the PZAB was for denial because of the proximity of the subject tenant space to residential development and housing as defined in the Land Development Regulations. In addition, the Village Code Enforcement Office has received several evening noise complaints since it has been open. Approval of extended hours and a change from a restaurant to a cocktail lounge may result in magnification of incidents of neighborhood conflict.

RESOLUTION NO. R2012-47

A RESOLUTION OF WELLINGTON, FLORIDA'S COUNCIL, APPROVING PETITION 2012-017 CU2, THE CONDITIONAL USE APPLICATION OF THE GRILLE RESTAURANT (COCKTAIL LOUNGE) TO ALLOW OPERATION WITH A 4COP ALCOHOL LICENSE WITHIN 250 FEET OF A RESIDENTIAL DISTRICT IN A PLANNED DEVELOPMENT AND A CONDITIONAL USE TO ALLOW EXTENDED HOURS OF OPERATION WITHIN 300 FEET OF RESIDENTIAL HOUSING MONDAY – WEDNESDAY FROM 11:00 PM TO 12:00 AM AND THURSDAY – SUNDAY FROM 11:00 PM TO 2:00 AM LOCATED AT 12300 SOUTH SHORE BOULEVARD; PROVIDING CONFLICTS CLAUSE; AND PROVIDING SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Village Council, as the governing body of the Village of Wellington, Florida, pursuant to the authority in Chapter 163 and Chapter 166, Florida Statutes, and the Village of Wellington Land Development Regulations is authorized and empowered to consider petitions related to zoning and development orders; and

WHEREAS, the notice and hearing requirements, as provided in Article V of the Land Development Regulations, have been satisfied; and

WHEREAS, the subject site has been designated for commercial purposes by the Wellington Planned Unit Development (PUD) Master Plan and Future Land Use Map (FLUM) of the Comprehensive Plan; and

WHEREAS, the requested conditional uses for a cocktail lounge and extended hours of operation were reviewed by the Planning, Zoning and Adjustment Board at a public hearing and the Board voted unanimously (6-0) to recommend approval of both requests with conditions defined in this resolution; and

WHEREAS, the Village Council has considered the evidence and testimony presented by the Petitioner and other interested parties and the recommendations of the various Village of Wellington review agencies and staff; and

WHEREAS, the Village Council has made the following findings of fact:

1. The site of the restaurant has been approved for commercial use by the Wellington PUD Master Plan and the FLUM.
2. The request is consistent with the Comprehensive Plan.

- 1 3. Supplementary Use Standards. The petitioner on behalf of the restaurant
2 owner is seeking approval through a Conditional Use as allowed by the code
3 for the cocktail lounge (4COP) and extended hours of operation as described.
- 4 4. Compatibility. The restaurant use was previously approved as part of the
5 Mizner Place commercial development and the Council found it to be
6 compatible with the uses and character of the surrounding land uses.
7 However, the site was not approved as a cocktail lounge. Council approval is
8 required if the minimum of 250 feet separation from a residential district
9 cannot be accommodated. The extended hours of operation later than 11:00
10 pm also requires Council approval for distance less than 300 feet from
11 residential housing. The petitioner on behalf of the restaurant owner is
12 seeking approval through a Conditional Use as allowed by the code.
- 13 5. There are adequate public facilities available to serve the subject site and the
14 proposed conditional uses.
- 15 6. There are no environmental issues or concerns arising from the proposed
16 conditional uses to allow a cocktail lounge and extended hours of operation.
- 17 7. The request does not propose any change in development patterns.
- 18 8. The subject property is not part of a neighborhood plan.
- 19 9. There is no increase in intensity and there are no new projected traffic
20 impacts during 7-9 am and 4-6 pm peak hours.

21
22 **NOW, THEREFORE, BE IT RESOLVED BY WELLINGTON'S COUNCIL,**
23 **FLORIDA, THAT:**

24
25 **SECTION 1.** The Development Order Amendment Petition 2012-017 CU2, the
26 request of Avery S. Chapman, Esq. on behalf of The Grille Restaurant, for conditional use
27 approvals for a cocktail lounge and the extended hours of operation of Monday –
28 Wednesday from 11:00 pm to 12:00 am and Thursday – Sunday from 11:00 pm to 2:00
29 am located at 12300 South Shore Boulevard is hereby approved with the following
30 conditions:
31

- 32 1. The business must operate in the same manner as a restaurant with a
33 4COPSRX liquor license consistent with Section 61A-3.0141 Special
34 Restaurant Licenses, Florida Administrative Code, but not including Section
35 61A-3.0141(3)(a) (**Exhibit A**), for only the following provisions:
 - 36 a. A qualifying restaurant with a service area occupying 2,500 square feet
37 or more of floor space, not including any space contained in an
38 uncovered or not permanently covered area adjacent to the premises;
 - 39 b. Required square footage must be contiguous and under the
40 management and control of a single licensed restaurant establishment;
 - 41 c. Must have accommodations for the service and seating of 150 or more
42 patrons at tables at one time; tables must be of adequate size to

1 accommodate the service of full course meals in accordance with the
2 number of chairs or other seating facilities provided at the table;

- 3 d. Full course meals must be available at all times when the restaurant is
4 serving alcoholic beverages except alcoholic beverage service may
5 continue until food service is completed to the final seating of
6 restaurant patrons for full course meals. A full course meal as required
7 must including salad or vegetable, entrée, beverage, and bread.

- 8 2. The restaurant must adhere to existing Wellington noise restrictions;
9 3. No outdoor entertainment without prejudice to allow them to seek further
10 opportunities in the future;
11 4. The Conditional Use is non-transferable;
12 5. The owner must file an affidavit signed by the General Manager or owner,
13 with backup documentation to the Village on June 1 of every year certifying
14 compliance with all conditions of approval;
15 6. Failure to abide by the foregoing conditions will subject the applicant to code
16 enforcement procedures which will include, but will not be limited to, monetary
17 penalty and/or revocation of the Conditional Use for the cocktail lounge and
18 extended hours of operation.
19

20 **SECTION 2.** This Resolution shall become effective immediately upon adoption.
21

22
23 **PASSED AND ADOPTED** this ____ day of _____ 2012.
24

25
26 **ATTEST:**

WELLINGTON, FLORIDA

27
28
29 BY: _____ BY: _____
30 Awilda Rodriguez, Village Clerk Bob Margolis, Mayor
31

32
33 **APPROVED AS TO FORM AND**
34 **LEGAL SUFFICIENCY:**
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37 BY: _____
38 Jeffrey S. Kurtz, Village Attorney
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I. Petition Description

Petition No.: 2012-017 CU2

Project Name: The Grille Restaurant Conditional Use

Owner: Mizner Place, LLC
75 N.E. 6th Avenue, #103
Delray Beach, Florida 33483

Applicant: Juanito's Restaurant, LLC
12300 South Shore Boulevard
Wellington, Florida 33414

Petitioner: Avery S. Chapman, Esq.
Chapman Law Group, PLC
12008 South Sore Boulevard, #107
Wellington, Florida 33414

Request: The petitioner is seeking approval for a Conditional Use to allow The Grille Restaurant to operate as a cocktail lounge with a 4COP liquor license within 250 feet of a residential district in a planned development and a conditional use to allow extended hours of operation within 300 feet of residential housing Monday – Wednesday from 11:00 pm to 12:00 am and Thursday – Sunday from 11:00 pm to 2:00 am.

Location: The subject property is located at 12300 South Shore Boulevard on the north side of South Shore Boulevard between Big Blue Trace and Forest Hill Boulevard. Exhibit "A" is a Location Map.

II. Site Data

Existing Use: Restaurant with a 4COPSRX liquor license

Proposed Use: Cocktail Lounge with a 4COP Liquor license

Future

Land Use

Designation: Community Commercial

Zoning

Designation: Agriculture Residential with a Special Exception for a
Planned Unit Development

PCN: 73-41-44-15-19-002-0000

III. Land Use and Zoning

	Existing Land Use	Future Land Use	Zoning
Subject site	Restaurant	Community Commercial	Agriculture Residential with a Special Exception for a Planned Unit Development (AR/SE/PUD)
North	Residential- Waterstone Apartment Complex	Residential "H" (18.01 – 22.0 Dwelling Units per acre).	(AR/SE/PUD)
East	Undeveloped land of the future Mayfair Commercial	Community Commercial	PUD
South	South Shore Boulevard and a residential portion of Hunter's Chase of Palm Beach Polo Country Club	Major Roads and Residential "C" (1.01 – 3.0 Dwelling Units per acre).	(AR/SE/PUD)
West	Professional Offices of the Mizner Place Development	Community Commercial	(AR/SE/PUD)

IV. Site History

On August 13, 1996, the Village Council approved Ordinance 96-23 the Development Order Amendment to redesignate a portion of Dornum Holdings, N.V. Corp. property Tract 46-A/B from commercial to add 224 residential units and to add an access from South Shore Boulevard. On July 20, 1999, the Village Council adopted Resolution R99-53, which modified the Wellington PUD Master Plan for Tract 46(B) to allow commercial development with requested uses consisting of a bank with drive-through, retail, two restaurants and office space. On September 10, 1999, the Development Review Committee certified the site plan and other minor site plan amendments. On October 19, 1999, Village Council approved Resolution R99-77 approving the Development Order Amendment to allow a hotel, restaurant and a convenience store with gasoline sales and a car wash. On July 25, 2000, the Village Council approved R2000-52 to modify the Wellington PUD Master Plan (Tract 46B) to modify/delete

conditions of approval, including square footage restrictions. On January 9, 2007, the Village Council approved Resolution No.R2007-04 approving Nicole's Tavern Conditional Use to allow outdoor entertainment (1998-5 CU1). Nicole's Tavern closed over a year ago and The Grille Restaurant has opened in the same location. Although the applicant did not list the Nicole's Tavern's Conditional Use Resolution number on the history section of the application, they did address it in the Justification and staff determined that it has no bearing on the current request since that approval was to allow outdoor entertainment and the approval was not transferable to another tenant or to another location.

V. Staff Analysis

Mizner Place is a 4.75-acre commercial development consisting of three buildings. The Grille Restaurant is in the center building on the first floor adjacent to the courtyard. The Grille Restaurant is seeking approval to operate the business as a 4COP liquor license (cocktail lounge) and for extended hours of operation Monday-Wednesday from 11:00 pm to 12:00 am and Thursday-Sunday from 11:00 pm to 2:00 am.

The request is for a conditional use to operate as a cocktail lounge with a 4COP liquor license within 250 feet of a residential district in a planned development district and a conditional use to allow extended hours of operation within 300 feet of residential housing. Since the Grille is within these required setbacks, the location and extension must be approved by Council in a development order. The following explains the land development regulations and the relevance to the request.

Section 6.4. No. 68 of Wellington's Land Development Regulations states "Lounge, cocktail" means a use engaged in the preparation and retail sale of alcoholic beverages for consumption on the premises, including taverns, bars, lounges, and similar uses other than restaurants or alcohol sales for off-premises consumption. A cocktail lounge is distinct from a restaurant that sells alcohol when the establishment cannot qualify for a "Consumption on Premises, Special Restaurant Exemption" (4 COPSRX) pursuant to the State Beverage Law. A cocktail lounge use shall also be subject to the following local Wellington Land Development Regulation supplementary use standards:

- a. **CN district.** In the CN district, a cocktail lounge use shall not consist of more than one thousand (1,000) square feet of gross floor area.

Not applicable. This property is zoned Community Commercial and not within the CN district.

- b. **Planned Development Districts.** Unless approved as a Requested Use in a Planned Development District, a cocktail lounge use shall not be located within two hundred fifty (250) feet of a residential district, measure by

drawing a straight line between the nearest point on the perimeter of the exterior wall or bay housing the proposed lounge to the nearest point on the property line of the residential district, nor within seven hundred fifty (750) feet of another cocktail lounge use, measured by drawing a straight line between the nearest point on the perimeter of the wall or bay of the proposed lounge to the nearest point on the existing lounge.

Does not comply. The Grille is within 50 feet of the property line for the Waterstone Apartment (fka The Vinings) complex immediately to the north and within 235 feet from the perimeter of Palm Beach Polo Country Club residential district to the south across South Shore Boulevard. This petition is to seek approval to operate as a cocktail lounge (4COP liquor license) instead of a restaurant with a liquor license 4COPSRX at this location. Approval of the use within the setbacks established in the Land Development Regulations must be made by Council.

Article 3. Sec. 3.1.21 Definitions - *Residential district* means any area that has a district classification AR, CRS, RE, TRS, RS, RM and RH, as well as residential pods of any Planned Development District. Any creation of an additional district by amendment to the Future Land Use Map which occurs shall automatically be included in the definition of residential district for the purposes of this Code.

The Grille is within a commercial pod within the Wellington PUD. Waterstone and Hunter's Chase are residential pods within the Wellington PUD. The cocktail lounge is required to be a minimum of 250 feet from a residential district or pod of the PUD unless approved by Council.

- c. **Outdoor areas.** Outdoor and open lounge areas shall be subject to the compatibility requirements of Sec. 7.3.E.3.b (Compatibility landscape buffer strips), and shall be subject to additional site design requirements to protect neighboring residential districts or uses against negative impacts from the open lounge area.

Not applicable. The petitioner on behalf of the owner is not seeking approval for outdoor entertainment. The restaurant does have an outdoor seating area in the courtyard.

The Division of Alcoholic Beverages and Tobacco defines the licenses as follows:

The 4 COPSRX license allows the sale of beer, wine, and liquor for consumption-Beer, Wine, and Liquor in connection with a restaurant; consumption on premises only. May only have spirituous beverages (liquor) in quarts, fifths or miniatures. Must meet certain requirements as to the number of seats, square footage, etc. Sale of alcoholic beverage prohibited when food service not

available. License cannot be moved to a new location. However, a restaurant must derive 51% of their revenue from food and non- alcoholic beverages to qualify for this special license. If this percentage cannot be met and maintained, the restaurant would not qualify for the special license and would then be required to obtain a regular (quota) license. [Reference: F.S. 561.20]

The 4COP license allows Beer, Wine, and Liquor for sale by the drink for consumption on premises and package sales in sealed containers. For every increase in the population of a county by 7500 residents, a new quota license is created. In order to obtain a quota (liquor) license, you must either buy an existing license, or enter the quota drawing to win the right to apply for a quota license. The winner may then apply for the issuance of the new license. For more information on "quota" licenses, F.S. 561.19 and 561.20 describe the requirements and conditions of this type of license.

The petitioner is also seeking approval for extended hours of operation for Monday – Wednesday from 11:00 pm to 12:00 am and Thursday-Sunday from 11:00 pm – 2:00 am. Wellington's Land Development Regulations states the following:

- Sec. 6.8.2.F.1.b.vii. (f)(ii.) - Commercial uses within 300 feet of residential housing shall not commence business activities (including delivery and stocking operations) prior to 6:00 a.m. nor continue activities later than 11:00 p.m. unless extended by a development order approved by Council.

The Land Development Regulations Sec. 6.8.2.F.1.b.vii. (f)(ii.) states Commercial uses within 300 feet of residential housing shall not commence business activities (including delivery and stocking operations) prior to 6:00 a.m. nor continue activities later than 11:00 p.m. unless extended by a development order approved by Council. The nearest structure of the Waterstone Apartment Complex is approximately 112 feet to the north and is within this required setback. Hunter's Chase residential houses are approximately 356 feet to the south of the restaurant and does not meet the separation requirement. This separation is measured from building to building.

Conditional Use Standards

- 1. Consistent with Comprehensive Plan.** The proposed conditional use is consistent with the goals, objectives and policies of the Comprehensive Plan, including standards for building and structural intensities and densities, and intensities of use.

The request to operate a cocktail lounge (4COP license) is consistent with the Village's Comprehensive Plan specifically GOAL 1 of the Land Use Element which states "Ensure that the future land-use pattern "preserves and protects the distinctive characteristics of the individual communities" which makes up Wellington and maintains a low-density residential character, enhances

community economic opportunities, discourages urban sprawl, promotes energy efficient land use patterns, maintains an aesthetically appealing and safely built environment, respects environmental constraints, and provides services for all citizens at the levels established herein. Additionally, the request maintains the intensity of the land use since the request does not increase the square footage of the restaurant.

The request is also consistent with *Objective 1.1* of the Land Use Element which states *"Maintain the density and intensity of the land uses in the community as reflected on Wellington's Future Land Use Map the site plan is not changing."*

The request is also consistent with *Objective 1.2* of the Land Use Element which requires *"Wellington to direct future growth into areas served by urban services that have adequate capacity."* The proposed location of the restaurant is within an existing commercial pod of the Wellington PUD and is consistent with this objective.

The request is also consistent with *Policy 1.1.1* which states *"to maintain the approved density and intensity of those properties in PUDs as reflected on Wellington's Future Land Use Map by adopting zoning districts which are consistent with the Future Land Use Map"*. The site is not changing the zoning or zoning district.

- 2. Complies with supplementary use standards.** The proposed conditional use complies with all relevant and appropriate portions of Sec. 6.4.4. No.68, Supplementary Use Standards.

Does not comply. The petitioner's request to operate as a cocktail lounge (4COP license) does not comply with Wellington's Land Development Regulations Article 6, Chapter 4. No. 68 since the location (or building) is within 50 feet of the Waterstone Apartment complex and 235 feet of the Palm Beach Polo Country Club residential district. **The requirement for a cocktail lounge is to be a minimum 250 feet from a residential district.** Additionally, **the request for the extended hours of operation does not comply with the minimum required separation of 300 feet from a residential housing.** However, the code allows the owner/applicant to request approval for the cocktail lounge designation and the extended hours of operation from Village Council.

- 3. Compatibility.** The proposed conditional use is compatible as defined in this Code and generally consistent with the uses and character of the land surrounding and in the vicinity of the land proposed for development;

Does not comply. The restaurant use was previously approved as part of the Mizner Place commercial development and the Council found it to be compatible with the uses and character of the surrounding land uses. However, **the site was not approved as a cocktail lounge which requires a**

minimum of 250 feet separation from a residential district. The extended hours of operation later than 11:00 pm also requires a minimum of 300 feet from residential housing. Additionally, Code Compliance Division from January through March of this year received noise complaints which were investigated and three incidences resulted in loud music and crowd noise after 11:00 pm.

- 4. Design minimizes adverse impact.** The design of the proposed Class "A" conditional use minimizes adverse effects, including visual impact and intensity of the proposed use on adjacent lands.

Does not comply. The request does not propose any site or building design changes. The request is for this restaurant tenant to operate as a cocktail lounge (4COP liquor license instead of a 4COPSRX). The request for extended hours of operation later than 11:00 pm has also not demonstrated the request will minimize adverse effects on adjacent residential properties. At the Planning, Zoning and Adjustment Board meeting, the restaurant owner and the agent stated they close the door to the restaurant that face south will not be used and only use the side door opening to the courtyard which they say reduces the noise exiting the restaurant.

- 5. Adequate public facilities.** The proposed Class "A" conditional use complies with Art. 11, Adequate Public Facility Standards.

Not applicable. The subject site has met all the requirements of Art. 11, Adequate Public Facility Standards. This site has been developed since 2000 and this location has been a restaurant type use since the site was developed.

- 6. Design minimizes environmental impact.** The proposed Class "A" conditional use minimizes environmental impacts, including but not limited to water, air, stormwater management, wildlife, vegetation, wetlands and the natural functioning of the environment.

Not applicable. The request to operate as a cocktail lounge and for extended hours of operation, does not have any environmental impacts including but not limited to water, air, stormwater management, wildlife, vegetation, wetlands and the natural functioning of the environment.

- 7. Development patterns.** Whether and the extent to which the proposed development will result in logical, timely and orderly development patterns.

Not applicable. The petitioner's request does not seek any new development or modifications of the existing site.

- 8. Other relevant standards of Code.** The proposed Conditional use complies

with all standards imposed on it by all other applicable provisions of this Code for use, layout, function, and general development characteristics.

Does not comply. The site is approved as a restaurant use and the layout and function and general development was approved as a restaurant site. The location does not meet the minimum separations for a cocktail lounge or extended hours of operation from adjacent residential areas.

9. Consistency with neighborhood plans. Whether and to what extent the proposed development is consistent with applicable neighborhood plans.

Not applicable. The subject property is not part of a neighborhood plan.

VI. Development Review Committee (DRC)

The Conditional Use application was reviewed by the Village's Development Review Committee at the June 13, 2012 meeting and determined it to be certified to the public hearing process.

VII. Planning Zoning and Adjustment Board

At their meeting on July 11, 2012, the Planning Zoning and Adjustment Board (PZAB) discussed at length the merits of the proposed Conditional Use Requests. The PZAB voted unanimously to approve the applicant's request for a 4COP Conditional Use cocktail lounge destination with the following conditions: 1.) the kitchen must remain open and that food must be served while serving alcohol; 2.) must adhere to existing Wellington noise restrictions; 3.) they are to have no outdoor entertainment without prejudice to allow them to seek further opportunities in the future; 4.) that it is nontransferable; 5.) their failure to abide by the foregoing provisions will subject that applicant to code enforcement procedures which will include but will not be limited to monetary penalty and/or revocation of its Conditional Use designation and grant the request for the extended hours of operations and 6.) with a requirement to file an annual affidavit with the Growth Management Department certifying they have been in continually compliance with all conditions of approval.

VIII. Public Notification / Comments

<u>PZAB</u>	July 11, 2012
Mailings:	June 25, 2012
Newspaper Advertisement:	June 25, 2012
Posted Signs:	June 25, 2012
Hearings:	

Village Council

August 28, 2012

Mailings:

August 13, 2012

Newspaper Advertisement:

August 13, 2012

Posted Signs:

August 13, 2012

Hearings:

IX. Staff Recommendation:

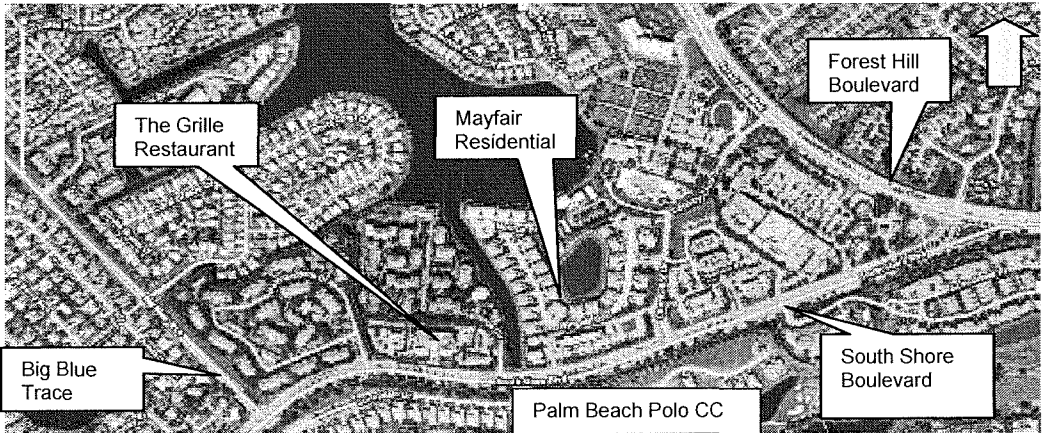
The Conditional Uses are recommended for approval based on the PZAB unanimous vote to approve the applicant's request for a 4COP Conditional Use cocktail lounge with the following conditions:

1. The business must operate in the same manner as a restaurant with a 4COPSRX liquor license consistent with Section 61A-3.0141 Special Restaurant Licenses, Florida Administrative Code, but not including Section 61A-3.0141(3)(a) (**Exhibit B**), for only the following provisions:
 - a. A qualifying restaurant with a service area occupying 2,500 square feet or more of floor space, not including any space contained in an uncovered or not permanently covered area adjacent to the premises;
 - b. Required square footage must be contiguous and under the management and control of a single licensed restaurant establishment;
 - c. Must have accommodations for the service and seating of 150 or more patrons at tables at one time; tables must be of adequate size to accommodate the service of full course meals in accordance with the number of chairs or other seating facilities provided at the table;
 - d. Full course meals must be available at all times when the restaurant is serving alcoholic beverages except alcoholic beverage service may continue until food service is completed to the final seating of restaurant patrons for full course meals. A full course meal as required must including salad or vegetable, entrée, beverage, and bread.
2. The restaurant must adhere to existing Wellington noise restrictions;
3. No outdoor entertainment without prejudice to allow them to seek further opportunities in the future;
4. The Conditional Use is non-transferable;
5. The owner must file an affidavit signed by the General Manager or owner, with backup documentation to the Village on June 1 of every year certifying compliance with all conditions of approval;

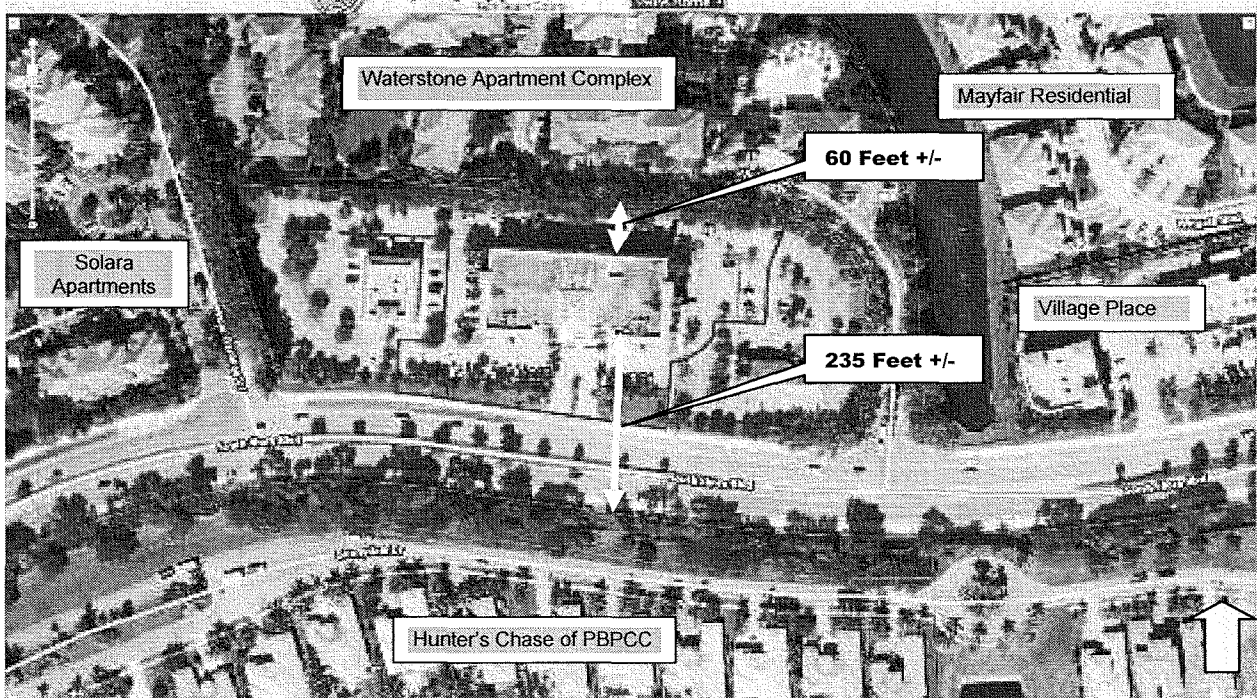
6. Failure to abide by the foregoing conditions will subject the applicant to code enforcement procedures which will include, but will not be limited to, monetary penalty and/or revocation of the Conditional Use for the cocktail lounge and extended hours of operation.

Staff's recommendation to the PZAB was for denial because of the proximity of the subject tenant space to residential development and housing as defined in the Land Development Regulations. In addition, the Village Code Enforcement Office has received several evening noise complaints since it has been open. Approval of extended hours and a change from a restaurant to a cocktail lounge may result in magnification of incidents of neighborhood conflict.

EXHIBIT A
LOCATION MAP



Minimum 250 feet required from a residential district for Cocktail Lounge (4COP)



Minimum 300 feet required from residential housing for extended hours of operation

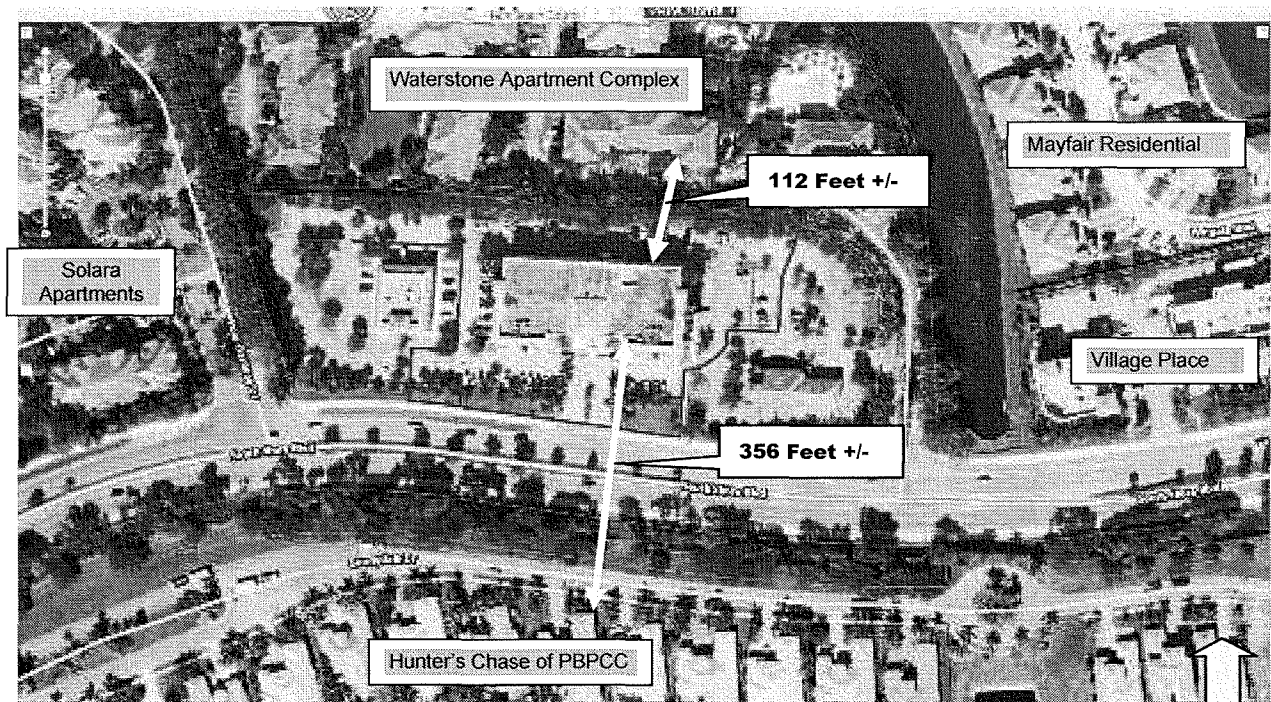


EXHIBIT A

61A-3.0141 Special Restaurant Licenses.

(1) Special restaurant licenses in excess of the quota limitation set forth in subsection 561.20(1), Florida Statutes, shall be issued to otherwise qualified applicants for establishments that are bona fide restaurants engaged primarily in the service of food and non-alcoholic beverages, if they qualify as special restaurant licensees as set forth in subsection (2) of this rule. Special restaurant licensees must continually comply with each and every requirement of both subsections (2) and (3) of this rule as a condition of holding a license. Qualifying restaurants must meet the requirements of this rule in addition to any other requirements of the beverage law. The suffix "SRX" shall be made a part of the license numbers of all such licenses issued after January 1, 1958.

(2) Special restaurant licenses shall be issued only to applicants for licenses in restaurants meeting the criteria set forth herein.

(a) Except in the counties of Alachua, Brevard, Broward, Citrus, for premises with a cocktail lounge or open bar, Dade, Pasco, St. Lucie, Walton, Martin, Nassau, Okaloosa, Okeechobee, Osceola, Hendry, Highlands, Hillsborough, Indian River, Lake, and Orange County with respect to Orlando, Winter Park, and Maitland, each of the above being controlled by general law or special act, a qualifying restaurant must have a service area occupying 2,500 or more square feet of floor space.

1. The required square footage shall not include any space contained in an uncovered or not permanently covered area adjacent to the premises because food service is not available at all times.

2. The required square footage shall be contiguous and under the management and control of a single licensed restaurant establishment.

3. Kitchens, food service areas, pantries, storage rooms, offices, and toilets, used exclusively in the operation of the restaurant shall be included in the required square footage. Measurements will be taken from the outside of qualifying structures or areas.

(b) Except in the counties of Alachua, Brevard, Broward, Dade, Hendry, Highlands, Walton, Hillsborough, Indian River, Pasco, Martin, Nassau, Okaloosa, St. Lucie, Osceola, and Orange County with respect to Orlando, Winter Park, and Maitland, each of the above being controlled by general law or special act, a qualifying restaurant must have accommodations for the service and seating of 150 or more patrons at tables at one time.

1. The tables and seating must be located within the floor space provided for in paragraph (2)(a) of this rule.

2. The tables must be of adequate size to accommodate the service of full course meals in accordance with the number of chairs or other seating facilities provided at the table.

3. Seating at counters used to serve food shall be included in the minimum seating requirements.

(c) Except in those counties and municipalities controlled by general law or special act, as set forth in paragraph (2)(b) of this rule, a qualifying restaurant must have all equipment for the service of 150 full course meals on the premises at one time.

(d) An applicant for an SRX license must either hold, or have applied for, the appropriate restaurant license issued by the Division of Hotels and Restaurants prior to issuance of the temporary SRX license. The restaurant must hold the appropriate restaurant license before it will be eligible for a permanent SRX license.

(e) A qualifying restaurant must comply with all fire safety laws relating to the operation of a restaurant.

(3) Qualifying restaurants receiving a special restaurant license after April 18, 1972 must, in addition to continuing to comply with the requirements set forth for initial licensure, also maintain the required percentage, as set forth in paragraph (a) or (b) below, on a bi-monthly basis. Additionally, qualifying restaurants must meet at all times the following operating requirements:

(a) At least 51 percent of total gross revenues must come from retail sale on the licensed premises of food and non-alcoholic beverages. Proceeds of catering sales shall not be included in the calculation of total gross revenues. Catering sales include food or non-alcoholic beverage sales prepared by the licensee on the licensed premises for service by the licensee outside the licensed premises.

1. Qualifying restaurants must maintain separate records of all purchases and gross retail sales of food and non-alcoholic beverages and all purchases and gross retail sales of alcoholic beverages.

2. The records required in subparagraph (3)(a)1. of this rule must be maintained on the premises, or other designated place approved in writing by the division for a period of 3 years and shall be made available within 14 days upon demand by an officer of the division. The division shall approve written requests to maintain the aforementioned records off the premises when the place to be designated is the business office, open 8 hours per work day, of a corporate officer, attorney, or accountant; the place to be designated is located in the State of Florida; and the place to be designated is precisely identified by complete mailing address.

3. Since the burden is on the holder of the special restaurant license to demonstrate compliance with the requirements for the license, the records required to be kept shall be legible, clear, and in the English language.

4. The required percentage shall be computed by adding all gross sales of food, non-alcoholic beverages, and alcoholic

beverages and thereafter dividing that sum into the total of the gross sales of food plus non-alcoholic beverages.

(b) Restaurants issued special restaurant licenses prior to April 18, 1972 but after September 1, 1969 shall be required to derive at least 30 percent of gross revenues from the sale of food and non-alcoholic beverages.

(c) Restaurants holding special restaurant licenses issued prior to September 1, 1969 are not required to derive any fixed amount of gross revenue from the sale of food and non-alcoholic beverages but must operate as a bona fide restaurant and meet the other requirements of this rule.

(d) Full course meals must be available at all times when the restaurant is serving alcoholic beverages except alcoholic beverage service may continue until food service is completed to the final seating of restaurant patrons for full course meals. A full course meal as required by this rule must include the following:

1. Salad or vegetable;
2. Entree;
3. Beverage; and
4. Bread.

(e) For purposes of determining required percentages, an alcoholic beverage means the retail price of a serving of beer, wine, straight distilled spirits, or a mixed drink.

(4) Establishments obtaining and operating under a temporary initial license as provided in Section 561.181(2), Florida Statutes, or under a temporary transfer license as provided in Section 561.331, Florida Statutes, shall be investigated by the division during said operation and prior to issuance of a permanent license to insure that the establishment is a bona fide restaurant primarily engaged in food and non-alcoholic beverage sales and service and that the requirements of this rule have been met. The failure of an establishment to operate as a bona fide restaurant during said period of time shall result in denial of the application for a special restaurant license. An application for a special restaurant license from an establishment which has had a prior application for a special restaurant license denied during the previous 30-day period will be accepted by the division. The recent denial of the prior application will, however, be deemed a disclosure on the face of the subsequent application of a reason to deny such subsequent application. Accordingly, in such cases, no temporary initial license will be issued for a period of 30 days to allow the division inspectors to ensure that the reason to deny has been abated.

Specific Authority 561.11 FS. Law Implemented 561.20(2)(a)4. FS. History--New 8-23-90, Amended 5-19-91, 10-22-91, Formerly 7A-3.0141.

CHAPMAN LAW GROUP, PLC
ATTORNEYS

rec'd
5/31-2
onp
18W
The Chancellor Building
12008 South Shore Boulevard
Suite 107
Wellington, Florida 33414
(561) 753-5996 Telephone
(561) 753-9966 Facsimile

May 3, 2012

VIA HAND DELIVERY

Olga M. Prieto
Associate Planner
Village of Wellington
12749 Forest Hill Blvd.
Wellington, FL 33414

Re: Conditional Use Application for The Grill.

Dear Ms. Prieto:

Enclosed is the Conditional Use Application for The Grill. With respect to its contents, please note the following: The owner is presently on vacation and will return after May 14th, after which time he will execute the owner's consent. I have spoken with him directly about the need to have the executed Owner Affidavits to the Village prior to the May 23rd DRC meeting and this does not present a problem for him. Additionally, we have included a 500 foot radius map and tax roll list and mailing labels to reflect the recent amendments to the Code (up from 300 feet). Further, because the conditions surrounding and site plan at Mizner Place have not changed significantly since the past Nicole's CUA, after consultation with Bob Basehart, we have attached the old site plan map and ariel map which we understand will be sufficient. As well, the materials on page 2 of the CUA checklist (items II.a. through b.) do not apply and therefore are not included.

If you have any questions or require additional information, please call me directly or reach me via email.

Thank you for your continued courtesies.

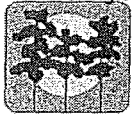
Very truly yours,

CHAPMAN LAW GROUP, PLC


AVERY S. CHAPMAN

encl.

cc: client w/ encl.



WELLINGTON

A Great Hometown...
Let Us Show You!

Planning, Zoning & Building Department

12300 Forest Hill Blvd., Wellington, FL 33414 (561) 753-2430 pzapplications@wellingtonfl.gov

CONDITIONAL USE APPLICATION

INSTRUCTIONS TO APPLICANTS:

1. Please complete all questions on the application. If not applicable, indicate with N/A.
2. Provide required attachments as shown on the attached checklist.
3. Filing Fees to be paid:

I. PROPERTY OWNER AND AGENT INFORMATION

Address: MIZNER PLACE, LLC City: 75 N.E. 6th Ave. Ste. 103 ST: Delray Beach, FL 33483

Phone: 561 278-9292 FAX: 561 278-9211

Applicant (if other than owner): JUANITO'S RESTAURANT, LLC

Address: 12300 SOUTH SHORE BLVD City: WELLINGTON ST: FL Zip: 33414

Phone: 561 252-4290 FAX: _____

Agent & Company Name: CHAPMAN LAW GROUP, PLLC, AVERY S. CHAPMAN, ESQ.

Address: 12008 SOUTH SHORE BLVD City: WELLINGTON ST: FL Zip: 33414

Phone: 561 753-5966 FAX: 561 753-9966 / ASCESQ1@CS.COM

Consultants: If applicable to your request, please attach a separate list of all consultants that will provide information on this request. You should include the name, address, telephone number, and fax number as well as the type of professional service provided.

II. CONDITIONAL USE REQUEST

Include a brief description of proposed use(s) including density/intensity and summary of request: _____

FOR CONTINUED OPERATION OF A FULL SERVICE RESTAURANT, CURRENTLY HOLDING
SRA LICENSE, TO OPERATE UNDER A LCOP LICENSE WITHIN 500 FEET OF
A RESIDENTIAL DEVELOPMENT. NOTE: NO OUTDOOR ENTERTAINMENT IS PROPOSED;
EXTENSION OF HOURS OF OPERATION UNTIL 2 A.M. PURSUANT TO ORDINANCE # 2011-04.

III. PROPERTY LOCATION

A. Is the subject property located within one mile of another municipality? [] yes [X] no

If 'yes' please specify: _____

B. Property Control Number (PCN): If additional PCNs, list on a separate sheet and attach to the application.

PCN: 7141-1411-1414-1115-1119-01012-0101010

C. Section: _____ Township: _____ Range: _____ Total Acreage of Subject Property 2.69

D. Project Name: THE GRILL

E. Project Address: 12300 SOUTH SHORE BLVD, WELLINGTON FL 33414

F. General Location Description (proximity to closest major intersection in miles or fractions thereof):

APPROX. 600 YARDS NORTH ON SOUTH SHORE BLVD. FROM
THE BIG BLUE - SOUTHSHORE BLVD. INTERSECTION.

- A. Zoning Designation: PUD Future Land Use Designation: _____
- B. Existing Use(s) on Property: OFFICE / RETAIL / RESTAURANT
- C. Proposed Use(s): FULL SERVICE RESTAURANT

V. PROJECT HISTORY

(List in sequence from first zoning application to most recent – attach additional page if necessary):

Petition Number	Request	Action	Date	Resolution Number

VI. ADJACENT PROPERTIES

Adjacent Property to the:	Land Use Designation	Zoning Designation	Existing Use(s) of Property	Approved Use(s) of Property*	Petition & Resolution Number
NORTH	RESIDENTIAL	PUD	APARTMENTS - RESIDENTIAL "H"		
SOUTH	ROAD & RESID.	PUD/M/SE	RESIDENTIAL "C"		
EAST	RESIDENTIAL	PUD	COMMUNITY COMMERCIAL		
WEST		AA/SE/PUD	COMMUNITY COMMERCIAL		

- * If adjacent land supports a previous approval by Wellington, please include a brief description of the approved use(s) and the approved square footage or number of dwelling units.

VII. COMPLIANCE

(Attach additional sheets if necessary)

- A. Is property in compliance with all previous conditions of approval and/or applicable Code requirements? If no, please explain, [X] yes [] no : _____

- B. Code Enforcement Case Number(s): _____

VIII. TABULAR DATA

PROJECT DATA	LAST BCC OR VC APPROVAL	LAST DRC APPROVAL	REQUIRED PER CODE	PROPOSED	+/- CHANGE
Acreage (total gross)					
Acreage (total net)					
Lot Frontage (ROW feet)					
Lot depth (maximum)					
Lot Width (minimum)					
Total Dwelling Units (du's)					
# of Single Family (SF)					
# of Zero Lot Line (ZLL)					
# of Townhouses (TH)					
# of Multi-Family (MF)					
Density					
Total Sq. Footage					
Commercial SF					

Industrial SF	Washington Council Meeting August 28, 2012				Page 442 of 564
Other SF					
# of Rooms					
# of Seats					
# of Beds					
# of Children					
# of Drive-Thru Lanes					
Floor Area Ratio (FAR)					
% Lot Coverage					
Maximum Structure Height					
Impervious Surface Area					
Open Space Area					
Recreation Area					
Preserve Area					
Civic Area					
Institutional Area					
Total Parking Spaces					
Handicap Parking Spaces					
# of Access Points/Roads					
# of Loading Areas/Spaces					
Accessory Structures (% FAR)					
Setbacks: Front/Rear					
Side Interior/Side Corner					

IX. APPLICANT'S STATEMENT OF JUSTIFICATION
(Attach additional sheets if necessary)

The applicant is to explain how the request conforms to the following:

- A. That the proposed request is consistent with all elements of the Comprehensive Plan.

PLEASE SEE ATTACHED STATEMENT OF JUSTIFICATION
("STATEMENT")

- B. That the proposed request is in compliance with Section 6.6 of the LDR (Supplementary Regulations).

PLEASE SEE ATTACHED STATEMENT

- C. That the proposed request will ensure general compatibility with adjacent properties and other property in the district (use and character).

PLEASE SEE ATTACHED STATEMENT

- D. That the design of the proposed request will minimize adverse effects, including visual impact and intensity of the proposed use on adjacent lands.

PLEASE SEE ATTACHED STATEMENT

- E. That satisfactory provisions have been made for public facilities.

PLEASE SEE ATTACHED STATEMENT

- F. That the design of the proposed request will minimize environmental impacts, including but not limited to water, air, stormwater management, wildlife, vegetation, wetlands and natural functioning of the environment.

PLEASE SEE ATTACHED STATEMENT

- G. That the proposed request will result in logical, timely and orderly development patterns.

PLEASE SEE ATTACHED STATEMENT

- H. That the proposed request complies with all Code standards for use, layout, function and general development characteristics.

PLEASE SEE ATTACHED STATEMENT

- I. That the proposed request is not out of scale with the needs of the neighborhood or Wellington.

PLEASE SEE ATTACHED STATEMENT

OWNER ACKNOWLEDGEMENT

I/We: _____, do hereby swear/affirm that I/we am/are the owner(s) of the property referenced in this application

I/We certify that the above statements and the statements or showings made in any paper or plans submitted herewith are true to the best of my/our knowledge and belief. Further, I/we understand that this application, attachments and fee become part of the official record of the Planning & Zoning Department of Wellington and the fee is not refundable. I/We understand that any knowingly false information given by me/us will result in the denial, revocation or administrative withdrawal of the application or permit. I/We further acknowledge that additional information may be required by Wellington in order to process this application.

I/We further consent to Wellington to publish, copy or reproduce any copyrighted document for any third party submitted as part of this application.

Signature(s) of Owner(s) _____

Print Name(s) _____

CONSENT STATEMENT

Owner to complete if using agent/representative

I/We, the aforementioned owner(s), do hereby give consent to _____ to act on my/our behalf to submit this application, all required material and documents, and attend and represent me/us at all meetings and public hearings pertaining to the request(s) and property I/we own described in the attached application. Furthermore, as owner(s) of the subject property, I/we hereby give consent to the party designated above to agree to all terms or conditions that may arise as part of the approval of this application for the proposed use.

Signature(s) of Owner(s) _____

Print Name(s) _____

NOTARY

STATE OF FLORIDA

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20____ by _____ He/She is personally known to me or has produced _____ as identification and did/did not take an oath.

(Signature of Notary) My Commission Expires: _____

(Name – Must be typed, printed, or stamped)

(NOTARY'S SEAL OR STAMP)

NOTICE AFFIDAVIT

STATE OF FLORIDA

COUNTY OF Palm Beach

Before me this day personally appeared Laura Lam who being duly sworn, deposes and says:

1. The accompanying Property Owners List is, to the best of his/her knowledge, a complete and accurate list of all property owners, mailing addresses and property control numbers as recorded in the latest official tax rolls of the Palm Beach County Property Appraiser for all property within three hundred (300) feet of the below described parcel of land.
2. The accompanying Property Owners List included, to the best of his/her knowledge, all affected municipalities and/or counties, in accordance with Wellington notice requirements and/or policies.
3. A tax map highlighting the properties located within ^{five} ~~three~~ hundred feet of the parcel of land that is the subject of the request is attached as part of this application. The accompanying Property Owner's list contains the required information for all properties highlighted on the tax map.
4. Public notice, which is his/her obligation to provide, will be in accordance with Wellington requirements

The property in question is: ☒ legally described as follows ☒ see attached legal description

Parcel B of Mizner Place, according to the plat thereof, recorded in Plat Book 87, Page 163, Public Records of Palm Beach County, Florida.

[Signature]
Signature

Laura Lam
Print, type or stamp name here

NOTARY

STATE OF FLORIDA

COUNTY OF Palm Beach

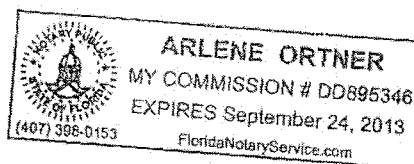
The foregoing instrument was acknowledged before me this 3rd day of May, 2012

By Laura Lam, who is personally known to me or has produced _____ as identification and who did/did not take an oath.

[Signature]
Signature of person taking Acknowledgement

Printed Signature

My Commission Expires:



Planning, Zoning & Building Department

12794 Forest Hill Blvd., Suite 23, Wellington, FL 33414 (561) 753-2430 Fax (561) 753-2439

**CONDITIONAL USE
SUBMITTAL CHECKLIST****I. GENERAL**

PLEASE CHECK

YES	NO	N/A	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	a. A completed application signed by owner, agent and/or applicant. Agent's authorization or power of attorney must be attached if applicant is other than owner.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	b. Required application fees
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	c. ^{51. (6)} Twelve (12) copies of a warranty deed including property control number or folio number and legal description of the property.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	d. A recent aerial photograph of the site with a minimum scale of 1" = 300
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	e. Ten (10) copies of signed and sealed survey (not more than a year old) including any and all easements of record (referenced by OR Book and page, prepared by a surveyor registered in the State of Florida.)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	f. A list of all property owners within a ^{500 feet} three hundred (300)-foot radius of boundary lines of the subject property from the most recent tax roll information as provided by the Palm Beach Property Appraiser's Office.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	g. Executed affidavit signed by the person responsible for completing the property owner list.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	h. Legal description of property (8.5' x 14' with 1' margins) and on disc (Word format)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	i. Two (2) sets of POSTAGE PAID envelopes with the typed names of the owners within a three hundred (300) foot radius of the boundary lines of the subject property, Wellington's return address and completed certified mail cards.

II. DEVELOPMENT CONCEPT OR SITE AND DEVELOPMENT PLAN (TWELVE COPIES)

(No larger than 24" x 36" with scale not smaller than 100' to an inch)

PLEASE CHECK			
YES	NO	N/A	
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	a. On disc the concept or site and development plan including but not limited to scale, date, north arrow, vicinity sketch, project name and gross acreage
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	b. The boundaries and dimensions of the property and its relationship to the surrounding road system including the width of the existing travelway.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	c. The location of existing easements, watercourses, section lines, water and sewer lines, well and septic tank location, and other existing important physical features in and adjoining the project to within 100'.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	d. The location and dimensions of existing manmade features such as existing roads and structures with indication as to which are to be removed, renovated or altered.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	e. The location and delineation of existing trees and information as to which trees will be removed.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	f. Identification of surrounding land use, zoning, and existing buildings within 100 feet of the site as well as the zoning of the petitioned site.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	g. Estimated square footage of the structures, the number of employees, estimated seating, and the estimated number of non-residential users of the facility, such as members, students, and patients.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	h. A layout of the proposed lots and/or building sites including the following: finished floor elevation, common open areas, generalized landscaping and buffer zones, internal circulation patterns including off-street parking and loading facilities, total project density, percentage of building coverage, percentage of open space areas, the shape, size, location and height of all structures.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	i. Proposed phasing of construction for the project, if applicable.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	j. Proposed hours of operation for non-residential uses.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	k. A signed and sealed drainage statement and conceptual drainage plan.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	l. Size, location and orientation of signs.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	m. Proposed lighting of the premises.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	i. A signed and sealed traffic impact statement addressing at minimum: additional roadway needs, intersection improvements, traffic control devices, future right of way dedications, distribution and assignment of traffic.

**Application Statement of Justification
In Support of Conditional Use Application
of Juancito's Restaurant, LLC**

I. Introduction.

This Application for a Class "A" Conditional Use, made pursuant to § 5.4.5. of the Village LDR, is consistent with the previously-approved, historic use of the site, the former Nicole's Tavern restaurant business. The Applicant operates in exactly the same space as the prior restaurant. No site plan or design change approvals are necessary. The Applicant currently operates a full service restaurant, serving lunch and dinner 7 days a week, under a current 4COPSRX license issued by DABT.

Because of the seasonal influx of customers surrounding the Winter Equestrian Festival, polo and other Winter activities, as well as the demand by both annual and Winter residents, and because the Applicant's restaurant is new, for some limited time in the past 6 months, there was a seasonal up-tick in business where alcohol sales exceeded food sales. While this balance has corrected to more food sales than alcohol now that Season has ended, out of an abundance of caution, the Applicant believes it is necessary to shift to operation to a 4COP license from its current 4COPSRX license. However, upon application to the Village for approval of the transition to a 4COP license, Applicant was advised that under the current Wellington Code, should the Applicant operate under a 4COP license, it would be re-classified as a "lounge" (although not an accurate description for Applicant's full service restaurant) and therefore require a Conditional Use Variance because the Applicant's restaurant would does meet the separation from residential use requirements. (See attached April 26, 2012 correspondence from Village Associate Planner Olga M. Prieto). Therefore, the within CUA is submitted to seek that approval and to seek extension of hours of operation to closing and clean up by 2 a.m. pursuant a development order under §6.6.2.F.1.b.vii(f)(ii) of the LDR.

Finally, it should be noted that Applicant is not seeking any exception or permission for outdoor entertainment, which was subject to an approved Conditional Use for the former Nicoles' Tavern restaurant. (See Petition # 1998-5 CU1, approved January 9, 2007).

II. CUA Section IX Statements.

A. The proposed request is consistent with all elements of the comprehensive plan.

As set forth in the Introduction, no site plan approvals or amendment to the Mizner Place Commercial Development, originally Tract 46(B) of the Wellington PUD, is required. The historic use of the property remains unchanged; in fact, the Applicant is not seeking to permit outdoor entertainment (previously approved for the prior tenant). Therefore the within CUA is actually *less burdensome* upon adjoining landowners and residents.

**CUA Statement of Justification
of Juancito's Restaurant, LLC
Page 2 of 3**

B. The proposed request is in compliance with Section 6.6 of the LDR.

The proposed request, containing no design changes to the property, demonstrates compliance with the following architectural compatibility standards. (Chapter § 6.6.3). No other sub-sections of Section 6.6 apply to the within request.

C. The proposed request will insure general compatibility with adjacent properties and other property in the district.

Because this Application is for the continuation of a previously-approved, historic use of the property and no significant changes to the adjacent properties and other property in the district have occurred, the proposed request continues the history of general compatibility. Further, the past approval of the application of the previous tenant of the property, Nicole's Tavern, which allowed outdoor entertainment (which this Applicant is *not* requesting) demonstrates that the continued use of the property as a restaurant with entertainment (whether inside or out) is indeed compatible with the adjacent and other properties.

D. The design of the proposed request will minimize adverse effects, including visual impact and intensity of the proposed use on adjacent lands.

There are no design changes from the previously-approved, historic use and previous use of the property. Applicant is willing to accept reasonable conditions that in the opinion of the Village would otherwise minimize adverse effects.

E. Satisfactory provisions have been made for public facilities.

The Applicant is a licensed and operating restaurant and complies with all relevant laws and ordinances as to public facilities.

F. The proposed request will minimize environmental impacts.

There are no site plan or design changes from the previously-approved, historic use and previous use of the property.

G. The proposed request will result in logical, timely and orderly development patterns.

The continuation of the historic use of the property as a restaurant is consistent with the development pattern of the surrounding area and the Village as a whole. The continued success of amenities such as the restaurant of Applicant, are an integral part of the growth of the Village as businesses that support both the seasonal and annual residents. The request for extension of hours of operation to closing and clean up by 2 a.m. pursuant to a development order under §6.6.2.F.1.b.vii(f)(ii) of the LDR, is not inconsistent with the need for places of indoor public entertainment and is consistent with the hours of operation permitted other restaurants within the Village having approved conditional uses.

**CUA Statement of Justification
of Juancito's Restaurant, LLC
Page 3 of 3**

- H. The proposed request complies with all Code standards for use, layout, function and general development characteristics.**

As a continuation of a previously-approved historic use, which actually reduces the outside use of the property (because no outdoor entertainment is requested by this Applicant), the proposed request is therefore consistent and otherwise complies with all Code standards. The continued use of the site for a restaurant with a 4COP license promotes the purpose and intent of an enlightened and imaginative approaches to community planning (§ 6.8.2.A. PUD), the establishment of private civic and recreation uses to serve the PUD (§ 6.8.2.A.4. PUD), provides a commercial use to serve the residents of the PUD (§ 6.8.2.A.5. PUD) and provides for the provision of flexible property development regulations to promote innovative and quality site design (§ 6.8.2.A.8. PUD)

- I. The proposed request is not out of scale with the needs of the neighborhood or Wellington.**

The previously-approved, historic use was as a full service restaurant with entertainment. The Applicant seeks to continue that use with the benefit that the Applicant is not providing any outdoor entertainment, unlike the previous tenant of the property. The full-service restaurant of Applicant, serving lunch and dinner, fulfills a need for the local neighborhood and continues to be in scale with the neighborhood. Applicant notes that this use is consistent with Village Council Resolution R99-53, adopted on July 20, 1999, which modified the Wellington PUD Master Plan for Tract 46(B) to allow commercial development, including *two* restaurants (there has been and presently is only Applicant's). That site plan was certified on September 10, 1999 by the Village DRC, as have been subsequent minor site plan amendments for commercial development at the site.



A GREAT HOMETOWN

Council

Bob Margolis, Mayor
Howard K. Coates, Jr., Vice Mayor
Matt Willhite, Councilman
Anne Gerwig, Councilwoman
John Greene, Councilman

Manager
Paul Schofield

April 26, 2012

Avery S. Chapman, Esq.
Chapman Group, PLC
12008 South Shore Boulevard, #107
Wellington, Florida 33414


Re: Juanito's Restaurant, LLC d/b/a The Grille Restaurant
Application for Change in License Type 4COPSRX to 4COP

Dear Avery,

Please be advised the Planning and Zoning Division cannot sign off on The Grille Restaurant's recent application to change their former type license series from 4COPSRX to 4COP until a Conditional Use application has been submitted for public hearings and ultimately approved by Wellington's Council. The new Juanito's Restaurant can continue to operate under the current 4COPSRX license series but must be in compliance with Wellington's Zoning regulations. As we discussed, you will need to submit a Conditional Use application on behalf of the restaurant owner for a Cocktail Lounge if the alcohol revenues continue to exceed food sales. The tentative schedule if submitted by May 3rd would be the Development Review Committee on May 23rd, the July 4th Planning, Zoning and Adjustment Board meeting which will likely be rescheduled and a tentative August 14th Wellington Council meeting.

I have already emailed you a copy of the former tenant (Nicole's Tavern) Conditional Use application for reference in preparing your application. Enclosed I'm returning to you The Grille Restaurant Division of Alcoholic Beverages and Tobacco Change in Series Type Application you submitted, which as mentioned above we are unable to approve at this time. If you need any further information, please do not hesitate to contact me by email or by phone at 753-2561.

Sincerely,



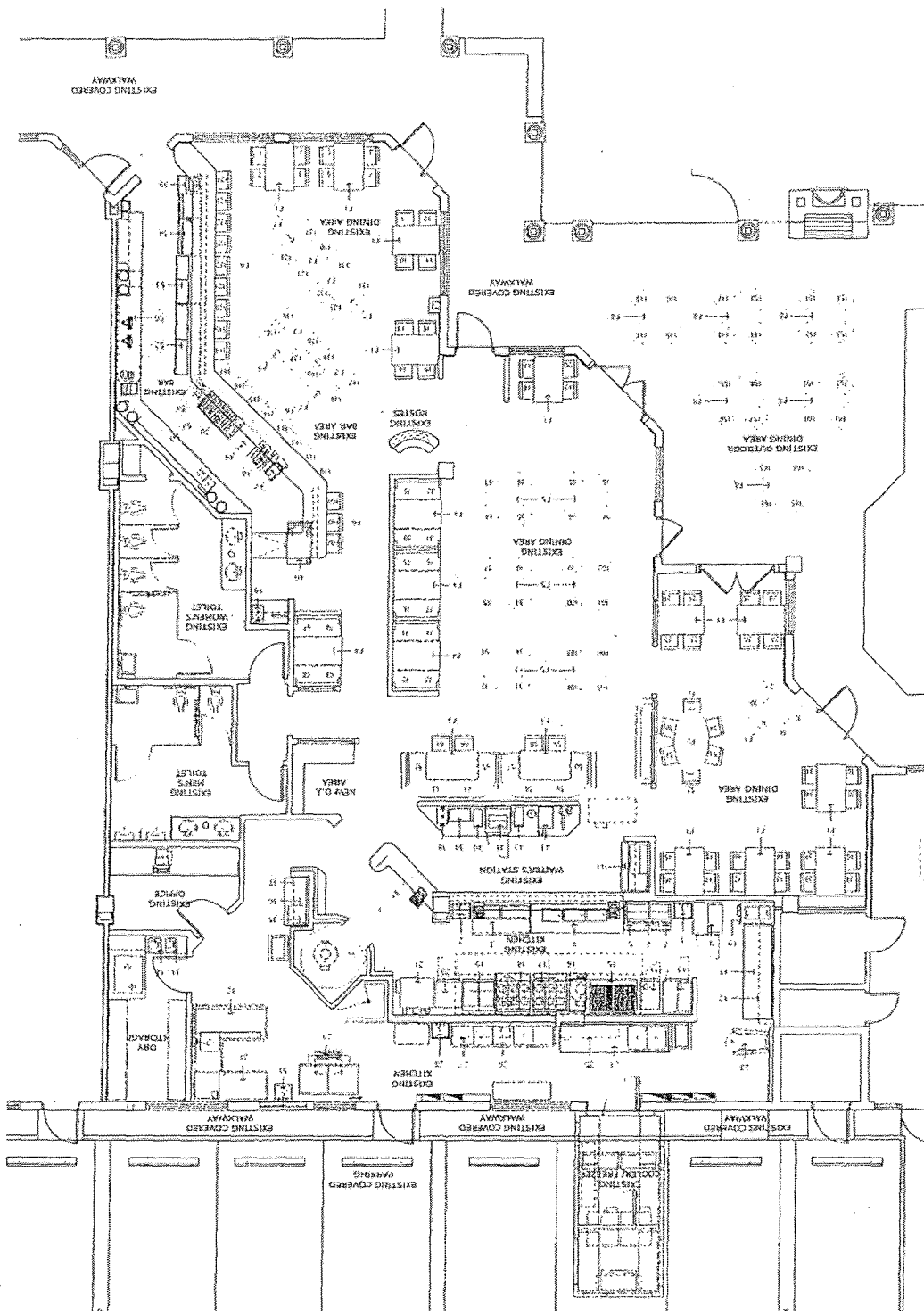
Olga M. Prieto
Associate Planner

Encl (1)

Cc: David Flinchum, ASLA, AICP, Planning and Zoning Manager
Robert Basehart, Growth Management Director
Jeff Kurtz, Village Attorney

EXHIBIT "B"

Parcel B of MIZNER PLACE, according to the plat thereof, recorded in Plat Book 87, Page 163, Public Records of Palm Beach County, Florida.



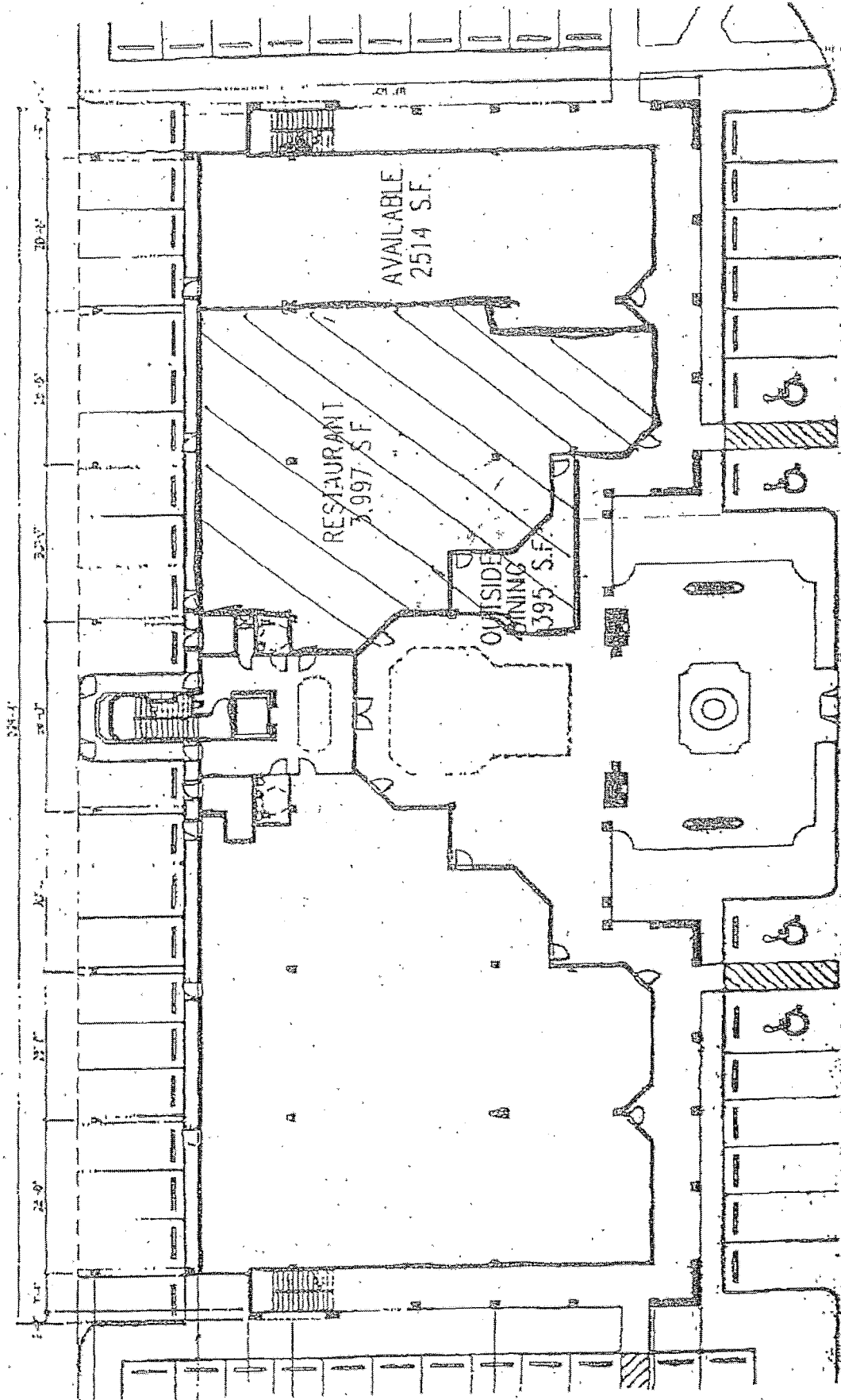


EXHIBIT "A"

"MIZNER PLACE"

A PARCEL OF LAND LYING IN SECTION 15, TOWNSHIP 44 SOUTH, RANGE 41 EAST,
VILLAGE OF WELLINGTON, PALM BEACH COUNTY, FLORIDA.

THAT THE U.S. AIR ACCIDENTED AT ITS BOMBING AREA IS THE OFFICIAL RECORD OF THE
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"PHOTOS AT RECEPTION"
PAGE 14
MAY BE OF THE FOR THE AREA

INSET SCALE: 1" = 20'

DETAIL A-A

Author's Address: Department of Psychology,
University of Illinois at Chicago, Chicago, IL 60607-7181.
E-mail: john@psych.uic.edu

RECEIVED BY THE SECRETARY OF THE ARMY

11) INFORMATION: THE DATA PROVIDED BY SUBJECTS OF FIVE HUNDRED SUBJECTS AT THE UNIVERSITY OF CALIFORNIA, LOS ANGELES, IN 1967, WAS USED TO DETERMINE THE EFFECT OF THE LEVEL OF STRESS ON THE RATE OF GROWTH OF THE RAT. THE DATA WERE ANALYZED BY THE METHOD OF LEAST SQUARES.

ABBREVIATIONS	DESCRIPTION
A.C.C.	ANTI OF CONSUMERS
A.F.A.	ANTI OF FARMERS
A.L.A.	ANTI OF LABOR
A.M.A.	ANTI OF MEDICAL
A.N.A.	ANTI OF NATIONS
A.O.A.	ANTI OF OFFICIALS
A.P.A.	ANTI OF POLITICS
A.R.A.	ANTI OF RACIAL
A.S.A.	ANTI OF SCIENCE
A.T.A.	ANTI OF TRUTH
A.U.A.	ANTI OF UNION
A.V.A.	ANTI OF VIOLENCE
A.W.A.	ANTI OF WAR
A.X.A.	ANTI OF XENOPHONY
A.Y.A.	ANTI OF YOUTH
A.Z.A.	ANTI OF ZOOLOGY
B.A.A.	BROTHERS OF AMERICA
B.C.A.	BROTHERS OF CANADA
B.E.A.	BROTHERS OF EUROPE
B.F.A.	BROTHERS OF FINANCE
B.G.A.	BROTHERS OF GERMANY
B.H.A.	BROTHERS OF HONOR
B.I.A.	BROTHERS OF INDIA
B.J.A.	BROTHERS OF JAPAN
B.K.A.	BROTHERS OF KOREA
B.L.A.	BROTHERS OF LEBANON
B.M.A.	BROTHERS OF MEXICO
B.N.A.	BROTHERS OF NATIONS
B.O.A.	BROTHERS OF OFFICIALS
B.P.A.	BROTHERS OF POLITICS
B.R.A.	BROTHERS OF RACIAL
B.S.A.	BROTHERS OF SCIENCE
B.T.A.	BROTHERS OF TRUTH
B.U.A.	BROTHERS OF UNION
B.V.A.	BROTHERS OF VIOLENCE
B.W.A.	BROTHERS OF WAR
B.X.A.	BROTHERS OF XENOPHONY
B.Y.A.	BROTHERS OF YOUTH
B.Z.A.	BROTHERS OF ZOOLOGY

[illegible]



Gary R. Nikolits, CFA
Property Appraiser
Palm Beach County

[PAPA Search](#)[PAPA Home](#)**Search**[Search Results Detail](#)[View Property Record](#)**Owners**

MIZNER PLACE LLC
NORMAN S WEINSTEIN C/O

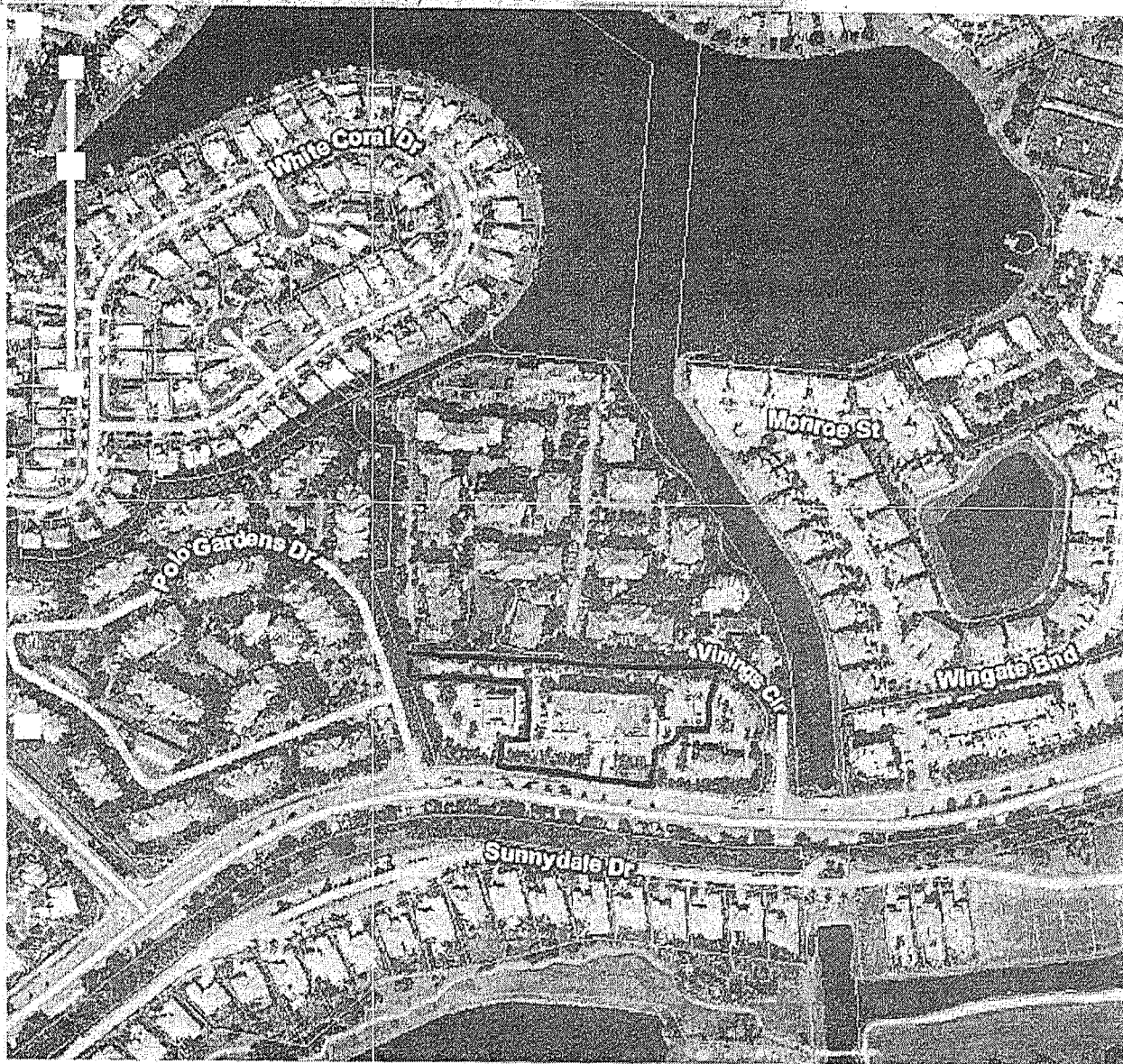
Property detail

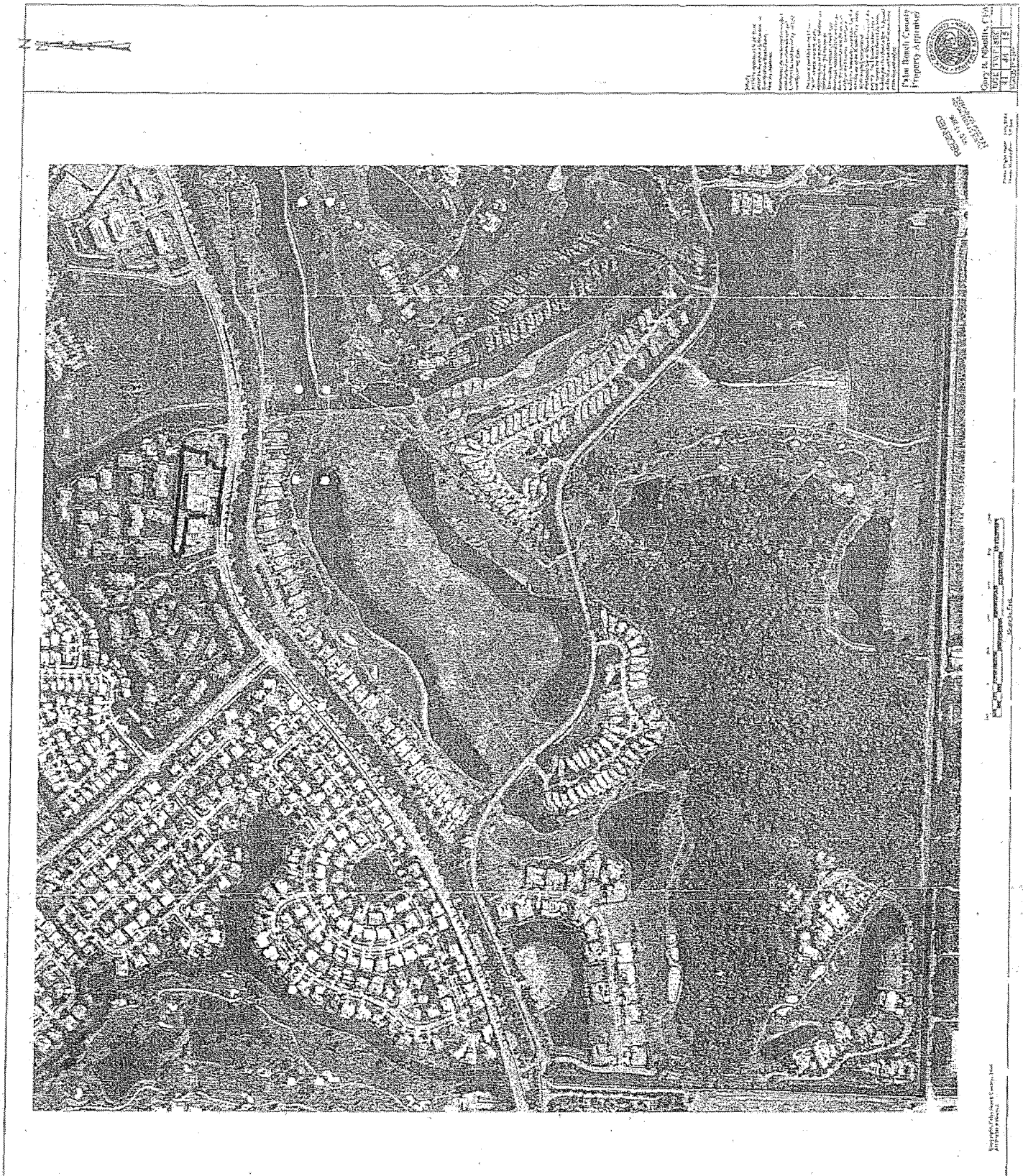
Location 12300 SOUTH SHORE BLVD
Municipality WELLINGTON
Parcel No. 73414415190020000
Subdivision MIZNER PLACE
Book Page
Sale Date
Mailing Address 411 NE 7TH AVE
DELRAY BEACH FL
33483 5613
Use Type 1800 - OFFICE
MULTISTORY
Total Square Feet 36451

No Sales Information Available.

Appraisals

Tax Year 2011





Map of the property of the Council of the City of Wellington, New Zealand, showing the boundaries of the property and the location of the property in the City of Wellington, New Zealand. The map is a plan of the property and is not a map of the land.

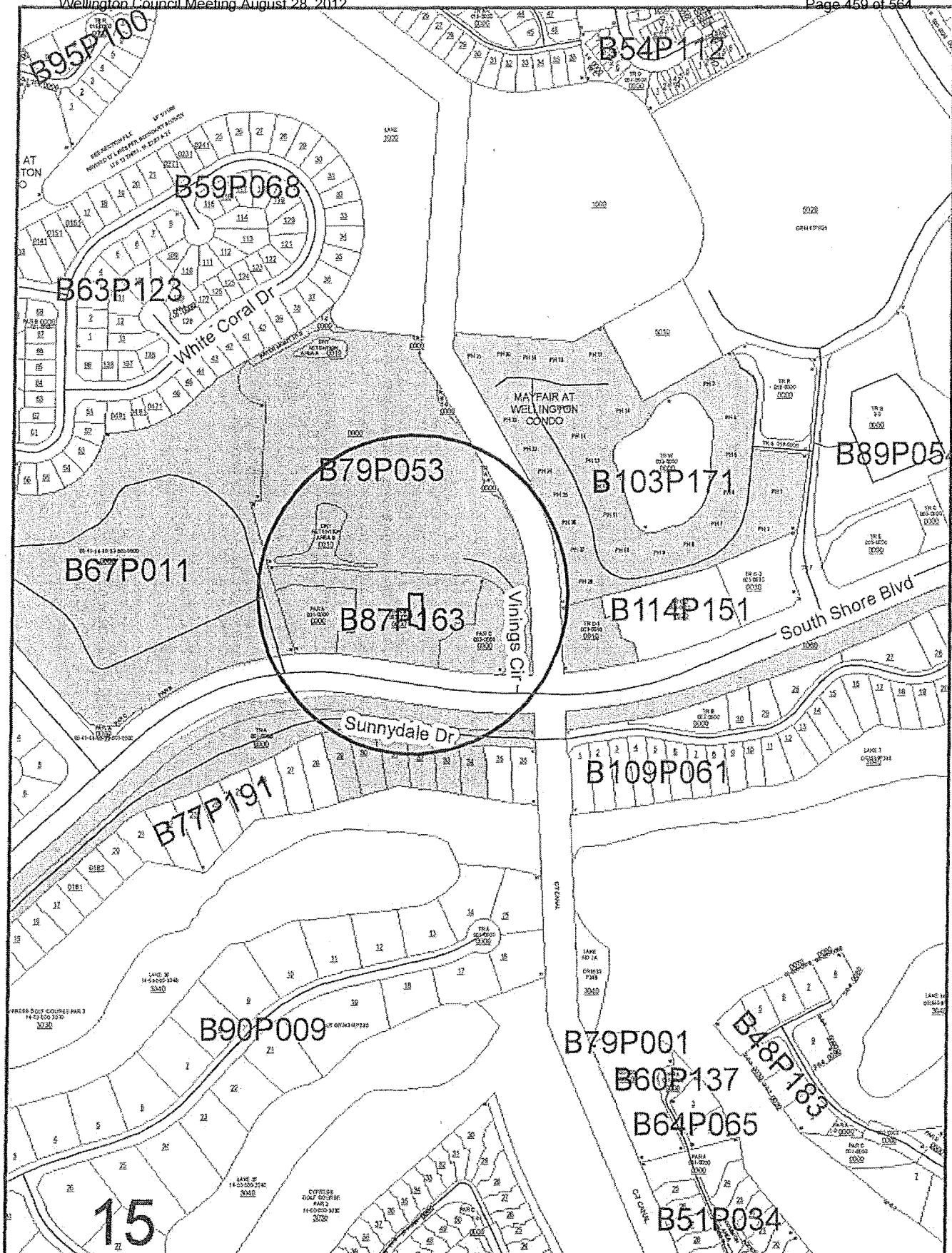


City of Wellington
Property Appraisal
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Gary R. Nikollis, CFA
Palm Beach County
Property Appraiser

Location: Downtown Service Center



Key

Selected Parcels: 100, 300, 500
Others: 200, 400

Notes:

Produced on: 4/17/2012

Property Appraiser GIS - PCN listing

Buffer:500

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73414410440090360	73414410440210810	
73414410440100370	73414410440210820	
73414410440100380	73414410440210830	
73414410440100390	73414410440210840	
73414410440100400	73414410440220850	
73414410440110410	73414410440220860	

Council

Darell Bowen, Mayor
Matt Willhite, Vice Mayor
Dr. Carmine A. Priore, Mayor pro tem
Howard K. Coates, Jr., Councilman
Anne Gerwig, Councilwoman

Manager
Paul Schofield

March 6, 2012

MIZNER PLACE LLC
411 NE 7TH AVE
DELRAY BEACH, FL 33483

JUAN GANDO
THE GRILLE
12300 SOUTH SHORE BLVD
WELLINGTON, FL 33414

RE: Courtesy Notice

Case Number: 12-00001418

Location: 12300 SOUTH SHORE BLVD 110A, WELLINGTON, FL

Dear Respondent:

An inspection of the above referenced property found the following violation of the Village of Wellington codes and ordinances exists on the property.

We have attached a "violation detail" that contains a description of the violation and a copy of the code or ordinance section. Compliance is required within 3 days of the date of this correspondence.

It is suggested that you take prompt action to correct the noted violation. If you have questions, wish to report that the violation has been corrected, or if you are working toward correcting the violation but need additional time due to special circumstances, please contact me at 561-753-2570, or, rcataldo@wellingtonfl.gov.

Sincerely,

RICHARD CATALDO
Code Compliance Officer

Wellington Council Meeting August 28, 2012
CASE NUMBER 12-00001418

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PROPERTY ADDRESS 12300 SOUTH SHORE BLVD 110A

VIOLATION: NOISE - AMPLIFIED SOUND QUANTITY: 1
DESCRIPTION: Code Sec 36-33.3 DATE: 3/15/12
LOCATION:

NARRATIVE :

Amplified sound plainly audible across property line of
adjacent inhabited residential land.

ORDINANCE DESCRIPTION :

3. Loud speakers and sound amplifiers. The using or operating of any loud speaker, loud speaker system, sound amplifier, radio, television, phonograph, musical instrument or other similar devise within or adjacent to inhabited residential land such that the sound therefrom is plainly audible across the property line of the inhabited residential land at any time. This section shall not apply to any special events, such as parades, festivals or sporting events, but shall apply to lounges, restaurants or nightclubs.

CORRECTIVE ACTION REQUIRED :

Comply with the Code Requirements

VILLAGE OF WELLINGTON

CASE TYPE	DATE ESTBL	INSPECTOR
Parcel Number	STATUS DATE	STATUS
ADDRESS	TENANT NBR	TENANT NAME
		ORIGINATION
NOISE ORDINANCE	1/10/12	RICHARD CATALDO
73-41-44-15-19-002-000 -0	1/10/12	ACTIVE
12300 SOUTH SHORE BLVD 110A		
WELLINGTON FL 33414		ANONYMOUS COMPLAINT

PROPERTY DESCRIPTION: MIZNER PLACE
PAR B

NOTICE NAMES: MIZNER PLACE LLC OWNER
411 NE 7TH AVE
DELRAY BEACH, FL 33483
GANDO, JUAN TENANT
THE GRILLE
12300 SOUTH SHORE BLVD
WELLINGTON, FL 33414

HISTORY: SCHEDULED ACTION STATUS RESULTED

1/11/12 INITIAL INSPECTION COMPLETED 1/11/12
INSPECTOR: RICHARD CATALDO
RQST TEXT: January 10, 2012 9:37:32 AM welllxh.
Received complaint that "The Grille" is having loud music
till 2:00 am, Thursday through Sunday mornings, and can be
heard as far away as Sunnydale Drive.
RSLT TEXT: RC 30 mins. Initial inspection found:
1. Spoke with Chef (acting manager) Clay Carnes who stated
they are aware of the complaint and committed to lower the
music volume so as to be compliant. General manger is Amer
Marukic.

1/14/12 FOLLOW UP INSPECTION COMPLETED 1/17/12
INSPECTOR: Charles Schulze
RQST TEXT: RC Please inspect as late as possible.
RSLT TEXT: January 17, 2012 7:05:45 AM wellcxs.
30 Mins.- cs
0015-0035 15 Jan 2012
No Music could be heard from across the street or either end
of parking lot.

1/28/12 FOLLOW UP INSPECTION COMPLETED 1/28/12
INSPECTOR: Debra Mitchell
RQST TEXT: January 26, 2012 7:42:59 AM wellsfk.
Please condcut an insection in the PM from PB Polo adjaceant
to the resturant and from Mayfair.
RSLT TEXT: January 28, 2012 10:47:21 PM wellldem.
no band or noise @ 9:20 pm & 10:20 pm

1/30/12 FOLLOW UP INSPECTION COMPLETED 1/30/12

CASE TYPE	DATE ESTBL	INSPECTOR
Parcel Number	STATUS DATE	STATUS
ADDRESS	TENANT NBR	TENANT NAME
		ORIGINATION

NOISE ORDINANCE	1/10/12	RICHARD CATALDO
73-41-44-15-19-002-000 -0	1/10/12	ACTIVE

~~12300 SOUTH SHORE BLVD 110A~~
WELLINGTON

FL 33414

ANONYMOUS COMPLAINT

INSPECTOR: RICHARD CATALDO

RQST TEXT:

RSLT TEXT: RC 30 mins. Follow up inspection found:

1. Spoke with Chef (acting manager) Clay Carnes explaining that conditional use permit from Nicole's Village Tavern is NOT transferable to The Grille. He explained that the music scheduled for 02-02-12 will all be indoors.

2/06/12 FOLLOW UP INSPECTION COMPLETED 2/04/12

INSPECTOR: CINDY DRAKE

RQST TEXT: RC Please inspect as late as possible.

RSLT TEXT: CLD 30 min site visit at 8:15PM found the front door open and diners on the patio. No noise violations.

At 10:30 the doors were closed - entertainment was indoors. There were still people at tables on the patio. No noise violation.

2/09/12 ACTIVITY OTHER COMPLETED

NARRATIVE: February 9, 2012 10:37:09 AM wellsfk.

I spoke to Avery Chapman, 561-889-8378, Attorney for the Grille. He requested information and the status of the case. I explained the complaint was anonymous and was regarding loud music. I added that we have found no violations. Mr. Chapman requested we call him if there are any issues.

2/11/12 FOLLOW UP INSPECTION COMPLETED 2/13/12

INSPECTOR: Charles Schulze

RQST TEXT:

RSLT TEXT: February 13, 2012 6:37:17 AM wellcxs.

30 Mins.- cs

2 visits made 1115 PM Saturday and 1225 AM Sunday

No Noise heard from either side of the plaza.

Note: It was 37 degrees and the doors were closed.

2/14/12 ACTIVITY OTHER COMPLETED

NARRATIVE: February 14, 2012 10:25:03 AM wellsfk.

I received an anonymous complaint that the Grille was open till 2:30am and the sound level was excessive. I spoke to Avery Chapman, 561-889-8378, Attorney for the restaurant and explained the complaint and that an Officer will be conducting an inspection on Sunday.

2/26/12 FOLLOW UP INSPECTION COMPLETED 2/27/12

INSPECTOR: Charles Schulze

RQST TEXT: RC Steve will determine which officer will conduct an FI on Sunday.

PROGRAM 003000
Wellington Council Meeting August 28, 2012 CASE NUMBER 12-00001418
VILLAGE OF WELLINGTON

Page 465 of 564

CASE TYPE
Parcel Number
ADDRESS

DATE ESTBL
STATUS DATE
TENANT NBR
INSPECTOR
STATUS
TENANT NAME
ORIGINATION

NOISE ORDINANCE 1/10/12 RICHARD CATALDO
73-41-44-15-19-002-000 -0 1/10/12 ACTIVE
12300 SOUTH SHORE BLVD 110A

WELLINGTON FL 33414 ANONYMOUS COMPLAINT

2/26/12 FOLLOW UP INSPECTION COMPLETED 2/27/12

INSPECTOR: Charles Schulze

RSLT TEXT: February 27, 2012 1:42:53 AM wellcx.
30 Mins.- CS

Was on site from 1245 AM until 115 AM, crowd noise and music could be heard at opposite end of parking lot in front of Edward Jones. Need to determine closing time for zoning district and perhaps measure noise on next visit.

3/01/12 ACTIVITY OTHER COMPLETED

NARRATIVE: RC 30 mins. Met with Juan Gando (President), Amer Marukic (General Manger), and Clay Carnes (Chef) to describe violation. They have committed to resolve the violation beginning this weekend.

3/04/12 FOLLOW UP INSPECTION COMPLETED 3/04/12

INSPECTOR: RICHARD CATALDO

RSLT TEXT: RC 30 mins. Follow up inspection found:

1. Amplified sound plainly audible across property line of adjacent inhabited residential land. Inspections at 11:15pm-11:45pm, 12:15am-12:45am, and 1:15am-1:45am.

3/06/12 VIOLATION NOTICE MAILED

3/25/12 FOLLOW UP INSPECTION COMPLETED 3/27/12

INSPECTOR: RICHARD CATALDO

RQST TEXT: RC Do FI this Sunday: 11:30, 12:30, 1:30 pm.

RSLT TEXT: RC 30 mins. Follow up inspection found:

1. Amplified sound plainly audible across property line of adjacent inhabited residential land. Inspection at 11:15pm.

4/26/12 ACTIVITY OTHER COMPLETED

NARRATIVE: RC NOV/NOH did not get scheduled. Equestrian season has now ended. Per Steve keep this case, as well as 12-2477, open until next FI in mid October.

10/15/12 FOLLOW UP INSPECTION SCHEDULED

INSPECTOR: RICHARD CATALDO

VIOLATIONS:

DATE

DESCRIPTION

QTY CODE

STATUS

RESOLVED

3/15/12 Code Sec 36-33.3

1 NOISE - AMPLIFIED SOUND

ACTIVE

LOCATION:

NARRATIVE: Amplified sound plainly audible across property line of adjacent inhabited residential land.



A Great Hometown...
Let Us Show You!

REGULAR MEETING OF THE WELLINGTON VILLAGE COUNCIL

Bob Margolis, Mayor
Howard K. Coates, Jr., Vice Mayor
Matt Willhite, Councilman
Anne Gerwig, Councilwoman
John Greene, Councilman

Wellington City Hall
12300 Forest Hill Boulevard
Wellington, Florida

TUESDAY, SEPTEMBER 11, 2012
7:00 PM

- 1. CALL TO ORDER**
- 2. PLEDGE OF ALLEGIANCE**
- 3. INVOCATION**
Pastor Godfrey Brown, Church of God of Phophecy, Wellington Mission
- 4. APPROVAL OF AGENDA**
- 5. PRESENTATIONS AND PROCLAMATIONS**

A. TOP COP AND TOP FIREFIGHTER AWARDS

Approval of the Public Safety Committee recommendations for Top Cop and Top Firefighter for 2012.

**B. PRESENTATION BY THE WELLINGTON PRESERVATION COALITION FOR THE USA
FIELD HOCKEY ASSOCIATION'S NATIONAL HOCKEY FESTIVAL**

Presentation by Wellington Preservation Coalition for the National Hockey Festival to be held in Wellington.

C. AMERICAN LEGION POST 12 PLAQUE PRESENTATION TO WELLINGTON

Presentation of a plaque to the Village of Wellington in appreciation of the use of the fields.

D. PROCLAMATION RECOGNIZING SEPTEMBER 21, 2012 AS UNITED NATIONS INTERNATIONAL DAY OF PEACE

Approval of a Proclamation recognizing September 21, 2012 as United Nations International Day of Peace

E. DISCUSSION AND DIRECTION REGARDING THE CONTINUED CONTRACTING OF LEGAL SERVICES VERSUS IN-HOUSE LEGAL SERVICES

Direction regarding the continued contracting of legal services versus bringing legal services in-house.

6. CONSENT AGENDA

A. MINUTES OF THE REGULAR WELLINGTON COUNCIL MEETINGS OF MAY 22, 2012 AND JUNE 12, 2012

Approval of the Regular Wellington Council Meetings of May 22, 2012 and June 12, 2012.

B. AUTHORIZATION TO UTILIZE MULTIPLE STATE OF FLORIDA CONTRACTS FOR THE PURCHASE OF INFORMATION TECHNOLOGY (IT) EQUIPMENT AND OUTSIDE SERVICES

Authorization to utilize State of Florida contract# 250-000-09-1 for the purchase of network infrastructure equipment; State of Florida contract# 250-WSCA-10-ACS for the purchase of miscellaneous IT Equipment; State of Florida contract# 973-561-10-1 to provide IT outside services.

C. RESOLUTION R2012-55 (TENNIS CENTER MANAGEMENT AND MAINTENANCE AGREEMENT)

A RESOLUTION OF WELLINGTON, FLORIDA'S COUNCIL APPROVING AMENDMENT #2 AND AMENDMENT #3 TO THE TENNIS CENTER MANAGEMENT AND MAINTENANCE AGREEMENT BETWEEN WELLINGTON AND CHEATHAM, INC. EXTENDING SAID AGREEMENT FOR THE 2012-2013 AND 2013-2014 FISCAL YEARS; AND PROVIDING AN EFFECTIVE DATE

Approval of Resolution R2012-55 amending and extending the Tennis Center Management and Maintenance Services Agreement with Cheatham, Inc.

D. FY 2012 BUDGET AMENDMENTS FOR STORM EXPENSES

Council approval of Budget Amendment #2012-033 to assign reserves and increase budgeted expenditures for emergency expenses related to Tropical Storm Isaac.

7. PUBLIC HEARINGS

A. FIRST BUDGET HEARING PROPOSED FISCAL YEAR 2012-2013

Approval of the proposed fiscal year 2012-2013 operating and capital budget including balances brought forward. This is the first public hearing on the proposed budget and the corresponding ad valorem millage rate in accordance with the Wellington Charter and Florida Statute Chapter 200.065. The second public hearing and adoption will be held on September 26, 2012.

B. RESOLUTION NO. R2012-11 (PALOMINO EXECUTIVE PARK MASTER PLAN AMENDMENT)

A RESOLUTION OF WELLINGTON, FLORIDA'S COUNCIL, APPROVING THE MASTER PLAN AMENDMENT FOR PETITION NUMBER 2011- 40 MPA 2, ALSO KNOWN AS PALOMINO EXECUTIVE PARK, A PARCEL OF LAND, TOTALING 12.15 ACRES, MORE OR LESS, LOCATED APPROXIMATELY ONE MILE NORTH OF LAKE WORTH ROAD ON THE WEST SIDE OF STATE ROAD 7, AS MORE SPECIFICALLY DESCRIBED HEREIN, TO ALLOW 112,400 SQUARE FEET OF PROFESSIONAL / MEDICAL OFFICE WITH A MAXIMUM 112,400 SQUARE FEET OF MEDICAL OFFICE; PROVIDING A CONFLICTS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

Approval of Resolution No. R2012-11 Master Plan Amendment (2011-40 MPA 2) to change the approved uses from 110,000 square feet of professional/medical office to a maximum 112,400 square feet of professional/medical office.

C. ORDINANCE NO. 2012-10 (WELLINGTON CHARTER SCHOOL COMPREHENSIVE PLAN AMENDMENT)

AN ORDINANCE OF WELLINGTON, FLORIDA'S COUNCIL; TO AMEND CONDITIONS OF THE COMMUNITY COMMERCIAL FUTURE LAND USE MAP DESIGNATION FOR CERTAIN PROPERTY KNOWN AS WELLINGTON CHARTER SCHOOL (FKA WELLINGTON DESIGN CENTER), TOTALING 8.35 ACRES, MORE OR LESS, LOCATED APPROXIMATELY ONE MILE SOUTH OF FOREST HILL BOULEVARD ON THE EAST SIDE OF STATE ROAD 7, AS MORE SPECIFICALLY DESCRIBED HEREIN; AMENDING THE USE CONDITIONS TO ALLOW A 1,200 STUDENT PRIVATE SCHOOL FOR GRADES K-8 TOTALING 75,000 SQUARE FEET; PROVIDING A CONFLICTS CLAUSE AND A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

Approval of Ordinance No. 2012-10 a Comprehensive Plan Amendment (2011-45 CPA 4) to change the approved uses from 79,480 square feet of retail furniture sales showroom/design center and 17,400 square feet of related warehouse storage space to allow a 1,200 student private school for grades K-8 totaling 75,000 square feet.

D. ORDINANCE NO. 2012-11 (WELLINGTON CHARTER SCHOOL DEVELOPMENT ORDER AMENDMENT)

AN ORDINANCE OF WELLINGTON, FLORIDA'S COUNCIL; APPROVING A DEVELOPMENT ORDER AMENDMENT TO AMEND CONDITIONS OF THE APPROVED ZONING FOR CERTAIN PROPERTY KNOWN AS WELLINGTON CHARTER SCHOOL

(FKA WELLINGTON DESIGN CENTER), TOTALING 8.35 ACRES, MORE OR LESS, LOCATED APPROXIMATELY ONE MILE SOUTH OF FOREST HILL BOULEVARD ON THE EAST SIDE OF STATE ROAD 7, AS MORE SPECIFICALLY DESCRIBED HEREIN; TO ALLOW A 1,200 STUDENT GRADES K-8 PRIVATE SCHOOL TOTALING 75,000 SQUARE FEET; PROVIDING A CONFLICTS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

Approval of Ordinance No. 2012-11 a Development Order Amendment (2011-45 DOA 2) to change the approved uses from 79,480 square feet of retail furniture sales showroom/design center and 17,400 square feet of related warehouse storage space to allow a 1,200 student private school for grades K-8 totaling 75,000 square feet.

8. REGULAR AGENDA

A. RESOLUTION R2012-54 (MODIFICATIONS TO EXISTING SPEED HUMP POLICY)

A RESOLUTION REPEALING RESOLUTION R2007-36 OF WELLINGTON, FLORIDA'S COUNCIL AND ADOPTING A NEW POLICY FOR THE INSTALLATION OF SPEED HUMPS ON CERTAIN TYPES OF RESIDENTIAL STREETS AS A TRAFFIC CONTROL MEASURE WITHIN THE VILLAGE OF WELLINGTON; AD PROVIDING AN EFFECTIVE DATE.

Approval of Resolution R2012-54 repealing the speed hump policy adopted in Resolution R2007-36 and adopting a new policy to include language applicable to public and private roads within subdivisions.

B. APPROVAL OF ALTERNATE COMPOSITION OF SELECTION COMMITTEE FOR ANNUAL AUDITING SERVICES AND SELECTION OF A FINANCIAL EXPERT

(A) alternate composition of Selection Committee for RFP# 087-12/ED - Annual Auditing Services, (B) Selection of a financial expert: Craig Bachove, CPA and (C) Approve timetable noted above.

C. CLARIFICATION OF MOTION APPROVING THE GRILLE'S CONDITIONAL USE APPLICATION

Staff seeks clarification and direction regarding the motion passed by the Council on August 28, 2012 regarding Resolution R2012-47 approving The Grille's Conditional Use request.

9. PUBLIC FORUM

10. ATTORNEY'S REPORT

11. MANAGER'S REPORT & UPDATES

12. COUNCIL REPORTS

13. ADJOURNMENT

NOTICE

If a person decides to appeal any decision made by the Village Council with respect to any matter considered at this meeting, you will need a record of the proceedings, and you may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. (The above notice is required by State Law. Anyone desiring a verbatim transcript shall have the responsibility, at his own cost, to arrange for the transcript).

Pursuant to the provision of the Americans With Disabilities Act: any person requiring special accommodations to participate in these meetings, because of a disability or physical impairment, should contact the Village Manager's Office (561) 791-4000 at least five calendar days prior to the Hearing.

8. C

**WELLINGTON VILLAGE COUNCIL
AGENDA ITEM SUMMARY**

AGENDA ITEM NAME: CLARIFICATION OF MOTION APPROVING THE GRILLE'S
CONDITIONAL USE APPLICATION

ACTION REQUESTED: Discussion ☒ Approval ☒

**BUDGET AMENDMENT
REQUIRED:** Yes ☐ No ☒ See Below ☐

PUBLIC HEARING: Yes ☐ No ☒ **QUASI-JUDICIAL** ☐

FIRST READING ☐

SECOND READING ☐

REQUEST: Staff seeks clarification and direction regarding the motion passed by the Council on August 28, 2012 regarding Resolution R2012-47 approving The Grille's Conditional Use request.

EXPLANATION: Councilman Greene's motion approving The Grille's Conditional Use request to operate a cocktail lounge and extend hours of operation had been understood by staff to allow The Grille to utilize a 4COP license. As Councilman Greene sets forth in the attached correspondence, it was not his intent, when making the motion, to have them be able to utilize the 4COP license. The intent of the motion was effectively to deny the cocktail lounge conditional use but allow the restaurant to extend its hours of operation. The verbatim transcript of the discussion on the motion is attached for your review. It is not clear from the discussion that the rest of Council understood Councilman Greene's intent when he made the motion, therefore, the matter is being brought back for clarification.

Since the Council had concluded the public hearing on the matter, there is not further need to hear from the applicant or the public. The applicant will be notified of the Council's continued deliberations on the matter.

If the Council does not approve of The Grille's operation with a 4COP license (cocktail lounge subject to conditions) and wants them to operate using a 4COPSRX, staff recommends eliminating the Village audit requirement as the State is much better equipped to monitor compliance with the technical aspects of that license classification.

The draft resolution, as it was staff's original understanding of Councilman Greene's motion, is attached for your reference along with the backup material on the matter presented to the Council on August 28, 2012.

LEGAL SUFFICIENCY: Yes

FISCAL IMPACT: N/A

VILLAGE GOAL: Economic Development

RECOMMENDATION: Clarification by Council on the intent of the motion related to Resolution R2012-47.

To: Paul Schofield
From: John Greene
Date: August 31, 2012

Re: Resolution R2012-47

I kindly request to have this item placed back on the agenda for the September 11, 2012 Wellington Council Meeting. This should not be open for public hearing. The applicant has presented to council and the public has already been given the opportunity to comment.

The motion I made carried 5-0 at the August 28, 2012 Wellington Council Meeting but there may be some confusion over the specific intent of my motion. I in no way am trying to change the conditions of my motion - I simply want to clarify my intent.

It appears that there are some inconsistencies in the language of final resolution. Specifically, it was not my intent to allow the applicant to operate under a 4COP license, which he obtained prior to Village approval. The applicant should operate with a 4COP-SRX license and meet whatever state requirements for the percentage of food/alcohol sales. The applicant is responsible for reporting his sales to the state as required by the state of Florida.

The intent of the requirement to report on an annual basis to the Village of Wellington that food sales are at least 51% of his revenue, which is subject to audit, is simply to confirm that he is meeting state requirements. The applicant is being granted significant consideration to extend his hours of operation. Currently, he does not meet the separation requirements per Village ordinance and as a condition of this resolution, I want to monitor that the applicant is in compliance with state law as an establishment operating with a 4COPSRX license.

The other conditions approved by council and by PZAB appear to be pretty straightforward and I don't believe that there is any confusion over these conditions. However, if it pleases the council, I am certainly willing to readdress all the conditions if the clarification I am providing would change their opinion or their vote.

Once again, I do not wish to reopen this item for public comments, unless it is required by ordinance. I will clarify my motion for council and the applicant should be given the opportunity to respond to council comments if so desired.

**Verbatim Excerpt
Council Motion regarding
The Grille Conditional Use
Wellington Council Meeting – August 28, 2012**

7. PUBLIC HEARINGS

7A: RESOLUTION R2012-47 (THE GRILLE CONDITIONAL USE): A RESOLUTION OF WELLINGTON, FLORIDA'S COUNCIL, APPROVING PETITION 2012-017 CU2, THE CONDITIONAL USE APPLICATION OF THE GRILLE RESTAURANT (COCKTAIL LOUNGE) TO ALLOW OPERATION WITH A 4COP ALCOHOL LICENSE WITHIN 250 FEET OF A RESIDENTIAL DISTRICT IN A PLANNED DEVELOPMENT AND A CONDITIONAL USE TO ALLOW EXTENDED HOURS OF OPERATION WITHIN 300 FEET OF RESIDENTIAL HOUSING MONDAY – WEDNESDAY FROM 11:00 PM TO 12:00 AM AND THURSDAY – SUNDAY FROM 11:00 PM TO 2:00 AM LOCATED AT 12300 SOUTH SHORE BOULEVARD; PROVIDING CONFLICTS CLAUSE; AND PROVIDING SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

Councilman Green: I will go ahead and make a motion that we adopt Resolution R2012-47 for the Grille Conditional Use with the following conditions as outlined by PZAB starting on page 420 through 421 making a change to Condition #3 to read that there will be no outdoor entertainment period. The applicant certainly in the future could come back and request additional entertainment, but the way that it is written without prejudice, we would strike that from that condition. Additional conditions would be hours of operation: Monday through Thursday, 7 am to 11:30 p.m, Friday, Saturday and Sunday, 7 a.m to 1:00 a.m. We will treat this applicant fairly as every other restaurant in town and the 51% food requirement would be in place that would be on an annual basis. As recommended by PZAB, you would have to submit an affidavit and be subject to audit by June 1st of every year. In all cases, every day outside service would end at 11:00 p.m.

Councilwoman Gerwig: Can I ask for clarification. 51% would be annually. So they would have to annually have sold 51% of food. The months that it are different would average out.

Councilman Greene: Whatever that process is. They are going to have peak months during the equestrian season where alcohol sales may exceed food sales. It would be operating as an SRX.

Councilwoman Gerwig: The Alcohol Commission requires daily and you are saying annually.

Councilman Greene: I believe our process in terms of being consistent with other establishments is that they were subject to an annual audit.

Councilwoman Gerwig: But the 51% is over the annual.

Councilman Greene: Whatever the State does is between him and the State. He would be operating with an SRX license and whatever State requirements he needs to follow are the requirements that he needs to follow. From a Village standpoint, they would be looking at that requirement on an annual basis to submit an affidavit to us by June 1st and it would be subject to audit.

Mr. Kurtz: So it is 11:30 pm on Monday night...

Councilman Greene: It is Monday through Thursday 7 am through 11:30 pm; Friday, Saturday and Sunday, 7 am to 1:00 am.

Mr. Kurtz: And by Sunday we are talking about Monday at 1:00 am.

Councilwoman Gerwig: And no outside service.

Councilman Greene: Outside food service stops at 11:00 pm every day.

Mayor Margolis: So, we have a motion, do we have a second from Mr. Greene's motion.

Vice Mayor Coates: Can I get clarification from you Mr. Schofield first. With respect to Mr. Greene's statement about the food that is the area of uncertainty for me. Do we have that requirement for Graffito's, White Horse at the time we approved it, for Player's Club and for the other restaurants and cocktail lounges that are operating the 51% annual food requirement.

Mr. Kurtz: That's the way it works for the Player's Club. It is an annual requirement that we impose on them and it is annualized that we look at it. We don't look at it on a day-by-day basis it is my recollection.

Vice Mayor Coates: It is a 4COP operating as an 4COPSRX.

Mr. Kurtz: That is the intent of what we are trying to do with that order.

Vice Mayor Coates: What about Graffito's we don't have any licensing issues with them; we never got into the issue. I assume they operate on an SRX.

Mr. Schofield: Actually he operates under a (interrupted)

Vice Mayor Coates: For clarification, I will second the motion.

Councilman Greene: The requirements and the recommendation allows him...he has to be able to serve food the entire time he is open for business, but if you just move that food service and take it off the patio at 11 pm and move it inside. He is going to have service inside anyway.

Vice Mayor Coates: Based on the representation that these other restaurants have the same restriction; that was my only issue. I will second the motion.

Mayor Margolis: So, we have a motion made by Councilman Greene, we have a second by Vice Mayor Coates, all in favor of the motion signify by saying "aye" all opposed? No opposed.

Mr. Schofield: Mr. Mayor you are going to need a motion to go past 11:00 p.m.

Councilman Willhite: So moved.

Mayor Margolis: We have a motion. We need a motion to go past 11:00 p.m.

Vice Mayor Coates: I will second it.

Mayor Margolis: We have a motion, we have a second, all in favor of going past 11:00 p.m. signify by saying "aye". We will be going past 11:00 p.m.

Councilwoman Gerwig: For the record, I was opposed to going past 11:00 p.m.

Mr. Schofield: Next item is Regular Agenda item 8A.

Mayor Margolis: Hand on one second Mr. Schofield. Do you want to take a few minutes break. Mr. Guando you understand the motion.

Mr. Guando: Yes, I do.

Mayor Margolis: Mr. Chapman you have understood Council's decision tonight.

Mr. Chapman: I understand the Council's decision, but I respectfully disagree with some of it, but that is another issue.

Councilwoman Gerwig: It is a year before they could come back.

Mayor Margolis: They could come back at any time.

Mr. Schofield: There is no limitation as to when they could come back.

Mr. Kurtz: You would have to make it without prejudice for them to come back within a year otherwise they could not come back with the same request on the Conditional Use.

Mr. Chapman: I would ask that you make it without prejudice.

Mr. Schofield: The question from me to the Attorney is this is an approval, I thought that prejudice was a denial because the way it was written is that denials are with prejudice unless otherwise...(interrupted).

Mr. Kurtz: It depends on how you want to look at it—it is a denial of what they were requesting. My opinion would be that they would not be able to come back within a year I believe it is with the same request unless you all say that approval was without prejudice. If you say it was without prejudice they could come back tomorrow.

Councilwoman Gerwig: Can we vote on it to add that now or do we have to...

Councilman Greene: Can we open it back up and amend it if we need to?

Mayor Margolis: Can we open it back up?

Mr. Kurtz: You can if there is, you know.

Councilwoman Gerwig: Do I make a motion to open it back up?

Mayor Margolis: Can we amend the motion?

Mr. Kurtz: The motion has been voted on, and you would need to vote to open it back up for a discussion. You can do it on that limited subject.

Councilwoman Gerwig: I move for that.

Mayor Margolis: We have a motion, do we have a second?

Councilman Willhite: Second

Mayor Margolis: All in favor of the motion, signify by saying "aye"

Councilman Greene: So, I will go back to my original motion to amending item 3, on page 420 from PZAB and we will leave the language the way it was written.

Councilwoman Gerwig: The motion is to say can we add that this is without prejudice that this is without prejudice so that he could come back in two months after we have seen the practice of it and we understand further.

Councilman Greene: So, you are talking about a motion without prejudice.

Councilwoman Gerwig: Make the entire motion without prejudice so that he could revise it because we may...and granted we didn't have Agenda Review yesterday and a lot of the questions and a lot of the reasons this went on longer was because of the storm and we were concerned. We didn't have a meeting we normally would because we could have vetted some of these things and have decisions made. So I think it is fair to make it without prejudice.

Councilman Greene: The amended motion would be without prejudice.

Mayor Margolis: We have the amended motion.

Vice Mayor Coates: Second.

Mayor Margolis: We have a second. All in favor of the amended motion, signify by saying "aye". [All say "aye"]. Let's take a five minute break if you don't mind.

RESOLUTION NO. R2012-47

A RESOLUTION OF WELLINGTON, FLORIDA'S COUNCIL, APPROVING PETITION 2012-017 CU2, THE CONDITIONAL USE APPLICATION OF THE GRILLE RESTAURANT (COCKTAIL LOUNGE) TO ALLOW OPERATION WITH A 4COP ALCOHOL LICENSE WITHIN 250 FEET OF A RESIDENTIAL DISTRICT IN A PLANNED DEVELOPMENT AND A CONDITIONAL USE TO ALLOW EXTENDED HOURS OF OPERATION WITHIN 300 FEET OF RESIDENTIAL HOUSING MONDAY – WEDNESDAY FROM 11:00 PM TO 12:00 AM AND THURSDAY – SUNDAY FROM 11:00 PM TO 2:00 AM LOCATED AT 12300 SOUTH SHORE BOULEVARD; PROVIDING CONFLICTS CLAUSE; AND PROVIDING SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Village Council, as the governing body of the Village of Wellington, Florida, pursuant to the authority in Chapter 163 and Chapter 166, Florida Statutes, and the Village of Wellington Land Development Regulations is authorized and empowered to consider petitions related to zoning and development orders; and

WHEREAS, the notice and hearing requirements, as provided in Article V of the Land Development Regulations, have been satisfied; and

WHEREAS, the subject site has been designated for commercial purposes by the Wellington Planned Unit Development (PUD) Master Plan and Future Land Use Map (FLUM) of the Comprehensive Plan; and

WHEREAS, the requested conditional uses for a cocktail lounge and extended hours of operation were reviewed by the Planning, Zoning and Adjustment Board at a public hearing and the Board voted unanimously (6-0) to recommend approval of both requests with conditions defined in this resolution; and

WHEREAS, the Village Council has considered the evidence and testimony presented by the Petitioner and other interested parties and the recommendations of the various Village of Wellington review agencies and staff; and

WHEREAS, the Village Council has made the following findings of fact:

1. The site of the restaurant has been approved for commercial use by the Wellington PUD Master Plan and the FLUM.
2. The request is consistent with the Comprehensive Plan.

3. Supplementary Use Standards. The petitioner on behalf of the restaurant owner is seeking approval through a Conditional Use as allowed by the code for the cocktail lounge (4COP) and extended hours of operation as described.
4. Compatibility. The restaurant use was previously approved as part of the Mizner Place commercial development and the Council found it to be compatible with the uses and character of the surrounding land uses. However, the site was not approved as a cocktail lounge. Council approval is required if the minimum of 250 feet separation from a residential district cannot be accommodated. The extended hours of operation later than 11:00 pm also requires Council approval for distance less than 300 feet from residential housing. The petitioner on behalf of the restaurant owner is seeking approval through a Conditional Use as allowed by the code.
5. There are adequate public facilities available to serve the subject site and the proposed conditional uses.
6. There are no environmental issues or concerns arising from the proposed conditional uses to allow a cocktail lounge and extended hours of operation.
7. The request does not propose any change in development patterns.
8. The subject property is not part of a neighborhood plan.
9. There is no increase in intensity and there are no new projected traffic impacts during 7-9 am and 4-6 pm peak hours.

NOW, THEREFORE, BE IT RESOLVED BY WELLINGTON'S COUNCIL, FLORIDA, THAT:

SECTION 1. The Development Order Amendment Petition 2012-017 CU2, the request of Avery S. Chapman, Esq. on behalf of The Grille Restaurant, for conditional use approvals for a cocktail lounge and the extended hours of operation of Monday – Wednesday from 11:00 pm to 12:00 am and Thursday – Sunday from 11:00 pm to 2:00 am located at 12300 South Shore Boulevard is hereby approved with the following conditions:

1. The business must operate in the same manner as a restaurant with a 4COPSRX liquor license consistent with Section 61A-3.0141 Special Restaurant Licenses, Florida Administrative Code, but not including Section 61A-3.0141(3)(a) (**Exhibit A**), for only the following provisions:
 - a. A qualifying restaurant with a service area occupying 2,500 square feet or more of floor space, not including any space contained in an uncovered or not permanently covered area adjacent to the premises;
 - b. Required square footage must be contiguous and under the management and control of a single licensed restaurant establishment;
 - c. Must have accommodations for the service and seating of 150 or more patrons at tables at one time; tables must be of adequate size to

1 accommodate the service of full course meals in accordance with the
2 number of chairs or other seating facilities provided at the table;

- 3 d. Full course meals must be available at all times when the restaurant is
4 serving alcoholic beverages except alcoholic beverage service may
5 continue until food service is completed to the final seating of
6 restaurant patrons for full course meals. A full course meal as required
7 must including salad or vegetable, entrée, beverage, and bread.

- 8 2. The restaurant must adhere to existing Wellington noise restrictions;
9 3. No outdoor entertainment without prejudice to allow them to seek further
10 opportunities in the future;
11 4. The Conditional Use is non-transferable;
12 5. The owner must file an affidavit signed by the General Manager or owner,
13 with backup documentation to the Village on June 1 of every year certifying
14 compliance with all conditions of approval;
15 6. Failure to abide by the foregoing conditions will subject the applicant to code
16 enforcement procedures which will include, but will not be limited to, monetary
17 penalty and/or revocation of the Conditional Use for the cocktail lounge and
18 extended hours of operation.

19
20 **SECTION 2.** This Resolution shall become effective immediately upon adoption.
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22

23 **PASSED AND ADOPTED** this _____ day of _____ 2012.
24
25

26 **ATTEST:**

WELLINGTON, FLORIDA

27
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29 BY: _____ BY: _____
30 Awilda Rodriguez, Wellington Clerk Bob Margolis, Mayor
31
32

33 **APPROVED AS TO FORM AND**
34 **LEGAL SUFFICIENCY:**
35
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37 BY: _____
38 Jeffrey S. Kurtz, Attorney for Wellington
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A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF WELLINGTON, FLORIDA, APPROVING PETITION 2012-017 CU2, THE CONDITIONAL USE APPLICATION OF THE GRILLE RESTAURANT (COCKTAIL LOUNGE) TO ALLOW OPERATION WITH A 4COP ALCOHOL LICENSE WITHIN 250 FEET OF A RESIDENTIAL DISTRICT IN A PLANNED DEVELOPMENT AND A CONDITIONAL USE TO ALLOW EXTENDED HOURS OF OPERATION WITHIN 300 FEET OF RESIDENTIAL HOUSING MONDAY – WEDNESDAY FROM 11:00 PM TO 12:00 AM AND THURSDAY – SUNDAY FROM 11:00 PM TO 2:00 AM LOCATED AT 12300 SOUTH SHORE BOULEVARD; PROVIDING CONFLICTS CLAUSE; AND PROVIDING SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

2. The request is consistent with the Comprehensive Plan.

3. Supplementary Use Standards. The petitioner on behalf of the restaurant owner is seeking approval through a Conditional Use as allowed by the code for the cocktail lounge (4COP) and extended hours of operation as described.
4. Compatibility. The restaurant use was previously approved as part of the Mizner Place commercial development and the Council found it to be compatible with the uses and character of the surrounding land uses. However, the site was not approved as a cocktail lounge. Council approval is required if the minimum of 250 feet separation from a residential district cannot be accommodated. The extended hours of operation later than 11:00 pm also requires Council approval for distance less than 300 feet from residential housing. The petitioner on behalf of the restaurant owner is seeking approval through a Conditional Use as allowed by the code.
5. There are adequate public facilities available to serve the subject site and the proposed conditional uses.
6. There are no environmental issues or concerns arising from the proposed conditional uses to allow a cocktail lounge and extended hours of operation.
7. The request does not propose any change in development patterns.
8. The subject property is not part of a neighborhood plan.
9. There is no increase in intensity and there are no new projected traffic impacts during 7-9 am and 4-6 pm peak hours.

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF THE VILLAGE OF WELLINGTON, FLORIDA, THAT:

SECTION 1. The Development Order Amendment Petition 2012-017 CU2, the request of Avery S. Chapman, Esq. on behalf of The Grille Restaurant, for conditional use approvals for a cocktail lounge and the extended hours of operation of Monday – Wednesday from 11:00 pm to 12:00 am and Thursday – Sunday from 11:00 pm to 2:00 am located at 12300 South Shore Boulevard is hereby approved with the following conditions as revised by Council:

1. The business must operate in the same manner as a restaurant with a 4COPSRX liquor license consistent with Section 61A-3.0141 Special Restaurant Licenses, Florida Administrative Code, but not including Section 61A-3.0141(3)(a) (**Exhibit A**), for only the following provisions:
 - a. A qualifying restaurant with a service area occupying 2,500 square feet or more of floor space, not including any space contained in an uncovered or not permanently covered area adjacent to the premises;
 - b. Required square footage must be contiguous and under the management and control of a single licensed restaurant establishment;
 - c. Must have accommodations for the service and seating of 150 or more patrons at tables at one time; tables must be of adequate size to

1 accommodate the service of full course meals in accordance with the
2 number of chairs or other seating facilities provided at the table;

- 3 d. Full course meals must be available at all times when the restaurant is
4 serving alcoholic beverages except alcoholic beverage service may
5 continue until food service is completed to the final seating of
6 restaurant patrons for full course meals. A full course meal as required
7 must including salad or vegetable, entrée, beverage, and bread.

8 2. The restaurant must adhere to existing Wellington noise restrictions;

9 3. No outdoor entertainment;

10 4. The Conditional Use is non-transferable;

11 5. Hours of operation Monday – Thursday from 7:00 p.m. to 11:30 pm and
12 Friday – Sunday 7:00 am – Monday 1:00 am. Outside service shall cease at
13 11:00 pm every day.

14 6. The owner must file an affidavit signed by the General Manager or owner,
15 with backup documentation including the 51% food Requirement to the
16 Village on June 1 of every year certifying compliance with all conditions of
17 approval. The Grille would be subject to an annual audit by the Village to
18 ensure compliance with all 4COPSRX requirements;

19 7. Failure to abide by the foregoing conditions will subject the applicant to code
20 enforcement procedures which will include, but will not be limited to, monetary
21 penalty and/or revocation of the Conditional Use for the cocktail lounge and
22 extended hours of operation.

23
24 **SECTION 2.** This Resolution shall become effective immediately upon adoption.

25
26
27 **PASSED AND ADOPTED** this ____ day of _____ 2012.

28
29
30 **ATTEST:**

VILLAGE OF WELLINGTON, FLORIDA

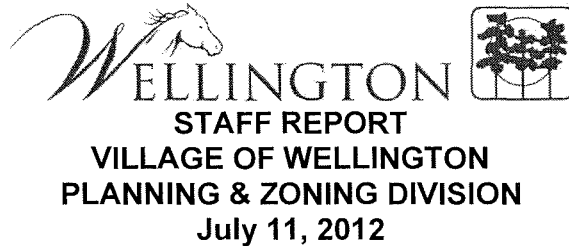
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33 BY: _____ BY: _____
34 Awilda Rodriguez, Wellington Clerk Bob Margolis, Mayor

35
36
37 **APPROVED AS TO FORM AND**
38 **LEGAL SUFFICIENCY:**

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41 BY: _____
42 Jeffrey S. Kurtz, Attorney for Wellington
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separation and hours Resolution 2012-47.doc



I. Petition Description

Petition No.: 2012-017 CU2

Project Name: The Grille Restaurant Conditional Use

Owner: Mizner Place, LLC
75 N.E. 6th Avenue, #103
Delray Beach, Florida 33483

Applicant: Juanito's Restaurant, LLC
12300 South Shore Boulevard
Wellington, Florida 33414

Petitioner: Avery S. Chapman, Esq.
Chapman Law Group, PLC
12008 South Shore Boulevard, #107
Wellington, Florida 33414

Request: The petitioner is seeking approval for a Conditional Use to allow The Grille Restaurant to operate as a cocktail lounge with a 4COP liquor license within 250 feet of a residential district in a planned development and a conditional use to allow extended hours of operation within 300 feet of residential housing Monday – Wednesday from 11:00 pm to 12:00 am and Thursday – Sunday from 11:00 pm to 2:00 am.

Location: The subject property is located at 12300 South Shore Boulevard on the north side of South Shore Boulevard between Big Blue Trace and Forest Hill Boulevard. Exhibit "A" is a Location Map.

II. Site Data

Existing Use: Restaurant with a 4COPSRX liquor license

Proposed Use: Cocktail Lounge with a 4COP Liquor license

Future
Land Use

Designation: Community Commercial

Zoning

Designation: Agriculture Residential with a Special Exception for a
Planned Unit Development

PCN: 73-41-44-15-19-002-0000

III. Land Use and Zoning

	Existing Land Use	Future Land Use	Zoning
Subject site	Restaurant	Community Commercial	Agriculture Residential with a Special Exception for a Planned Unit Development (AR/SE/PUD)
North	Residential- Waterstone Apartment Complex	Residential "H" (18.01 – 22.0 Dwelling Units per acre).	(AR/SE/PUD)
East	Undeveloped land of the future Mayfair Commercial	Community Commercial	PUD
South	South Shore Boulevard and a residential portion of Hunter's Chase of Palm Beach Polo Country Club	Major Roads and Residential "C" (1.01 – 3.0 Dwelling Units per acre).	(AR/SE/PUD)
West	Professional Offices of the Mizner Place Development	Community Commercial	(AR/SE/PUD)

IV. Site History

On August 13, 1996, the Village Council approved Ordinance 96-23 the Development Order Amendment to redesignate a portion of Dornum Holdings, N.V. Corp. property Tract 46-A/B from commercial to add 224 residential units and to add an access from South Shore Boulevard. On July 20, 1999, the Village Council adopted Resolution R99-53, which modified the Wellington PUD Master Plan for Tract 46(B) to allow commercial development with requested uses consisting of a bank with drive-through, retail, two restaurants and office space. On September 10, 1999, the Development Review Committee certified the site plan and other minor site plan amendments. On October 19, 1999, Village Council approved Resolution R99-77 approving the Development Order Amendment to allow a hotel, restaurant and a convenience store with gasoline sales and a car wash. On July 25, 2000, the Village Council approved R2000-52 to modify the Wellington PUD Master Plan (Tract 46B) to modify/delete

conditions of approval, including square footage restrictions. On January 9, 2007, the Village Council approved Resolution No.R2007-04 approving Nicole's Tavern Conditional Use to allow outdoor entertainment (1998-5 CU1). Nicole's Tavern closed over a year ago and The Grille Restaurant has opened in the same location. Although the applicant did not list the Nicole's Tavern's Conditional Use Resolution number on the history section of the application, they did address it in the Justification and staff determined that it has no bearing on the current request since that approval was to allow outdoor entertainment and the approval was not transferable to another tenant or to another location.

V. Staff Analysis

Mizner Place is a 4.75-acre commercial development consisting of three buildings. The Grille Restaurant is in the center building on the first floor adjacent to the courtyard. The Grille Restaurant is seeking approval to operate the business as a 4COP liquor license (cocktail lounge) and for extended hours of operation Monday-Wednesday from 11:00 pm to 12:00 am and Thursday-Sunday from 11:00 pm to 2:00 am.

The request is for a conditional use to operate as a cocktail lounge with a 4COP liquor license within 250 feet of a residential district in a planned development district and a conditional use to allow extended hours of operation within 300 feet of residential housing. Since the Grille is within these required setbacks, the location and extension must be approved by Council in a development order. The following explains the land development regulations and the relevance to the request.

Section 6.4. No. 68 of Wellington's Land Development Regulations states "Lounge, cocktail" means a use engaged in the preparation and retail sale of alcoholic beverages for consumption on the premises, including taverns, bars, lounges, and similar uses other than restaurants or alcohol sales for off-premises consumption. A cocktail lounge is distinct from a restaurant that sells alcohol when the establishment cannot qualify for a "Consumption on Premises, Special Restaurant Exemption" (4 COPSRX) pursuant to the State Beverage Law. A cocktail lounge use shall also be subject to the following local Wellington Land Development Regulation supplementary use standards:

- a. **CN district.** In the CN district, a cocktail lounge use shall not consist of more than one thousand (1,000) square feet of gross floor area.

Not applicable. This property is zoned Community Commercial and not within the CN district.

- b. **Planned Development Districts.** Unless approved as a Requested Use in a Planned Development District, a cocktail lounge use shall not be located within two hundred fifty (250) feet of a residential district, measure by

drawing a straight line between the nearest point on the perimeter of the exterior wall or bay housing the proposed lounge to the nearest point on the property line of the residential district, nor within seven hundred fifty (750) feet of another cocktail lounge use, measured by drawing a straight line between the nearest point on the perimeter of the wall or bay of the proposed lounge to the nearest point on the existing lounge.

Does not comply. The Grille is within 50 feet of the property line for the Waterstone Apartment (fka The Vinings) complex immediately to the north and within 235 feet from the perimeter of Palm Beach Polo Country Club residential district to the south across South Shore Boulevard. This petition is to seek approval to operate as a cocktail lounge (4COP liquor license) instead of a restaurant with a liquor license 4COPSRX at this location. Approval of the use within the setbacks established in the Land Development Regulations must be made by Council.

Article 3. Sec. 3.1.21 Definitions - *Residential district* means any area that has a district classification AR, CRS, RE, TRS, RS, RM and RH, as well as residential pods of any Planned Development District. Any creation of an additional district by amendment to the Future Land Use Map which occurs shall automatically be included in the definition of residential district for the purposes of this Code.

The Grille is within a commercial pod within the Wellington PUD. Waterstone and Hunter's Chase are residential pods within the Wellington PUD. The cocktail lounge is required to be a minimum of 250 feet from a residential district or pod of the PUD unless approved by Council.

- c. **Outdoor areas.** Outdoor and open lounge areas shall be subject to the compatibility requirements of Sec. 7.3.E.3.b (Compatibility landscape buffer strips), and shall be subject to additional site design requirements to protect neighboring residential districts or uses against negative impacts from the open lounge area.

Not applicable. The petitioner on behalf of the owner is not seeking approval for outdoor entertainment. The restaurant does have an outdoor seating area in the courtyard.

The Division of Alcoholic Beverages and Tobacco defines the licenses as follows:

The 4 COPSRX license allows the sale of beer, wine, and liquor for consumption-Beer, Wine, and Liquor in connection with a restaurant; consumption on premises only. May only have spirituous beverages (liquor) in quarts, fifths or miniatures. Must meet certain requirements as to the number of seats, square footage, etc. Sale of alcoholic beverage prohibited when food service not

available. License cannot be moved to a new location. However, a restaurant must derive 51% of their revenue from food and non- alcoholic beverages to qualify for this special license. If this percentage cannot be met and maintained, the restaurant would not qualify for the special license and would then be required to obtain a regular (quota) license. [Reference: F.S. 561.20]

The 4COP license allows Beer, Wine, and Liquor for sale by the drink for consumption on premises and package sales in sealed containers. For every increase in the population of a county by 7500 residents, a new quota license is created. In order to obtain a quota (liquor) license, you must either buy an existing license, or enter the quota drawing to win the right to apply for a quota license. The winner may then apply for the issuance of the new license. For more information on "quota" licenses, F.S. 561.19 and 561.20 describe the requirements and conditions of this type of license.

The petitioner is also seeking approval for extended hours of operation for Monday – Wednesday from 11:00 pm to 12:00 am and Thursday-Sunday from 11:00 pm – 2:00 am. Wellington's Land Development Regulations states the following:

- Sec. 6.8.2.F.1.b.vii. (f)(ii.) - Commercial uses within 300 feet of residential housing shall not commence business activities (including delivery and stocking operations) prior to 6:00 a.m. nor continue activities later than 11:00 p.m. unless extended by a development order approved by Council.

The Land Development Regulations Sec. 6.8.2.F.1.b.vii. (f)(ii.) states Commercial uses within 300 feet of residential housing shall not commence business activities (including delivery and stocking operations) prior to 6:00 a.m. nor continue activities later than 11:00 p.m. unless extended by a development order approved by Council. The nearest structure of the Waterstone Apartment Complex is approximately 112 feet to the north and is within this required setback. Hunter's Chase residential houses are approximately 356 feet to the south of the restaurant and does not meet the separation requirement. This separation is measured from building to building.

Conditional Use Standards

- 1. Consistent with Comprehensive Plan.** The proposed conditional use is consistent with the goals, objectives and policies of the Comprehensive Plan, including standards for building and structural intensities and densities, and intensities of use.

The request to operate a cocktail lounge (4COP license) is consistent with the Village's Comprehensive Plan specifically GOAL 1 of the Land Use Element which states "*Ensure that the future land-use pattern "preserves and protects the distinctive characteristics of the individual communities" which makes up Wellington and maintains a low-density residential character, enhances*

community economic opportunities, discourages urban sprawl, promotes energy efficient land use patterns, maintains an aesthetically appealing and safely built environment, respects environmental constraints, and provides services for all citizens at the levels established herein. Additionally, the request maintains the intensity of the land use since the request does not increase the square footage of the restaurant.

The request is also consistent with *Objective 1.1* of the Land Use Element which states *“Maintain the density and intensity of the land uses in the community as reflected on Wellington’s Future Land Use Map the site plan is not changing.”*

The request is also consistent with *Objective 1.2* of the Land Use Element which requires *“Wellington to direct future growth into areas served by urban services that have adequate capacity.”* The proposed location of the restaurant is within an existing commercial pod of the Wellington PUD and is consistent with this objective.

The request is also consistent with *Policy 1.1.1* which states *“to maintain the approved density and intensity of those properties in PUDs as reflected on Wellington’s Future Land Use Map by adopting zoning districts which are consistent with the Future Land Use Map”*. The site is not changing the zoning or zoning district.

- 2. Complies with supplementary use standards.** The proposed conditional use complies with all relevant and appropriate portions of Sec. 6.4.4. No.68, Supplementary Use Standards.

Does not comply. The petitioner’s request to operate as a cocktail lounge (4COP license) does not comply with Wellington’s Land Development Regulations Article 6, Chapter 4. No. 68 since the location (or building) is within 50 feet of the Waterstone Apartment complex and 235 feet of the Palm Beach Polo Country Club residential district. The requirement for a cocktail lounge is to be a minimum 250 feet from a residential district. Additionally, the request for the extended hours of operation does not comply with the minimum required separation of 300 feet from a residential housing. However, the code allows the owner/applicant to request approval for the cocktail lounge designation and the extended hours of operation from Village Council.

- 3. Compatibility.** The proposed conditional use is compatible as defined in this Code and generally consistent with the uses and character of the land surrounding and in the vicinity of the land proposed for development;

Does not comply. The restaurant use was previously approved as part of the Mizner Place commercial development and the Council found it to be compatible with the uses and character of the surrounding land uses. However, the site was not approved as a cocktail lounge which requires a

minimum of 250 feet separation from a residential district. The extended hours of operation later than 11:00 pm also requires a minimum of 300 feet from residential housing. Additionally, Code Compliance Division from January through March of this year received noise complaints which were investigated and three incidences resulted in loud music and crowd noise after 11:00 pm.

- 4. Design minimizes adverse impact.** The design of the proposed Class "A" conditional use minimizes adverse effects, including visual impact and intensity of the proposed use on adjacent lands.

Does not comply. The request does not propose any site or building design changes. The request is for this restaurant tenant to operate as a cocktail lounge (4COP liquor license instead of a 4COPSRX). The request for extended hours of operation later than 11:00 pm has also not demonstrated the request will minimize adverse effects on adjacent residential properties. At the Planning, Zoning and Adjustment Board meeting, the restaurant owner and the agent stated they close the door to the restaurant that face south will not be used and only use the side door opening to the courtyard which they say reduces the noise exiting the restaurant.

- 5. Adequate public facilities.** The proposed Class "A" conditional use complies with Art. 11, Adequate Public Facility Standards.

Not applicable. The subject site has met all the requirements of Art. 11, Adequate Public Facility Standards. This site has been developed since 2000 and this location has been a restaurant type use since the site was developed.

- 6. Design minimizes environmental impact.** The proposed Class "A" conditional use minimizes environmental impacts, including but not limited to water, air, stormwater management, wildlife, vegetation, wetlands and the natural functioning of the environment.

Not applicable. The request to operate as a cocktail lounge and for extended hours of operation, does not have any environmental impacts including but not limited to water, air, stormwater management, wildlife, vegetation, wetlands and the natural functioning of the environment.

- 7. Development patterns.** Whether and the extent to which the proposed development will result in logical, timely and orderly development patterns.

Not applicable. The petitioner's request does not seek any new development or modifications of the existing site.

- 8. Other relevant standards of Code.** The proposed Conditional use complies

with all standards imposed on it by all other applicable provisions of this Code for use, layout, function, and general development characteristics.

Does not comply. The site is approved as a restaurant use and the layout and function and general development was approved as a restaurant site. The location does not meet the minimum separations for a cocktail lounge or extended hours of operation from adjacent residential areas.

9. Consistency with neighborhood plans. Whether and to what extent the proposed development is consistent with applicable neighborhood plans.

Not applicable. The subject property is not part of a neighborhood plan.

VI. Development Review Committee (DRC)

The Conditional Use application was reviewed by the Village's Development Review Committee at the June 13, 2012 meeting and determined it to be certified to the public hearing process.

VII. Planning Zoning and Adjustment Board

At their meeting on July 11, 2012, the Planning Zoning and Adjustment Board (PZAB) discussed at length the merits of the proposed Conditional Use Requests. The PZAB voted unanimously to approve the applicant's request for a 4COP Conditional Use cocktail lounge destination with the following conditions: 1.) the kitchen must remain open and that food must be served while serving alcohol; 2.) must adhere to existing Wellington noise restrictions; 3.) they are to have no outdoor entertainment without prejudice to allow them to seek further opportunities in the future; 4.) that it is nontransferable; 5.) their failure to abide by the foregoing provisions will subject that applicant to code enforcement procedures which will include but will not be limited to monetary penalty and/or revocation of its Conditional Use designation and grant the request for the extended hours of operations and 6.) with a requirement to file an annual affidavit with the Growth Management Department certifying they have been in continually compliance with all conditions of approval.

VIII. Public Notification / Comments

PZAB

July 11, 2012

Mailings:

June 25, 2012

Newspaper Advertisement:

June 25, 2012

Posted Signs:

June 25, 2012

Hearings:

Village Council

August 28, 2012

Mailings:

August 13, 2012

Newspaper Advertisement:

August 13, 2012

Posted Signs:

August 13, 2012

Hearings:

IX. Staff Recommendation:

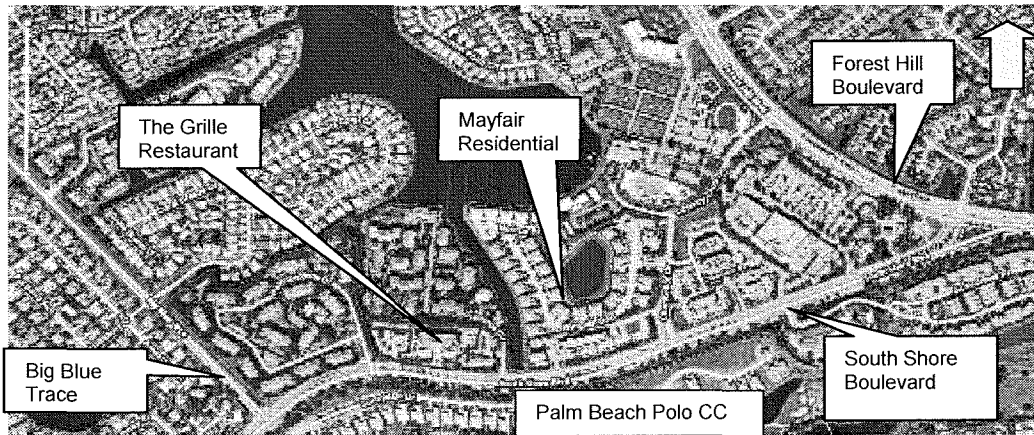
The Conditional Uses are recommended for approval based on the PZAB unanimous vote to approve the applicant's request for a 4COP Conditional Use cocktail lounge with the following conditions:

1. The business must operate in the same manner as a restaurant with a 4COPSRX liquor license consistent with Section 61A-3.0141 Special Restaurant Licenses, Florida Administrative Code, but not including Section 61A-3.0141(3)(a) (**Exhibit B**), for only the following provisions:
 - a. A qualifying restaurant with a service area occupying 2,500 square feet or more of floor space, not including any space contained in an uncovered or not permanently covered area adjacent to the premises;
 - b. Required square footage must be contiguous and under the management and control of a single licensed restaurant establishment;
 - c. Must have accommodations for the service and seating of 150 or more patrons at tables at one time; tables must be of adequate size to accommodate the service of full course meals in accordance with the number of chairs or other seating facilities provided at the table;
 - d. Full course meals must be available at all times when the restaurant is serving alcoholic beverages except alcoholic beverage service may continue until food service is completed to the final seating of restaurant patrons for full course meals. A full course meal as required must including salad or vegetable, entrée, beverage, and bread.
2. The restaurant must adhere to existing Wellington noise restrictions;
3. No outdoor entertainment without prejudice to allow them to seek further opportunities in the future;
4. The Conditional Use is non-transferable;
5. The owner must file an affidavit signed by the General Manager or owner, with backup documentation to the Village on June 1 of every year certifying compliance with all conditions of approval;

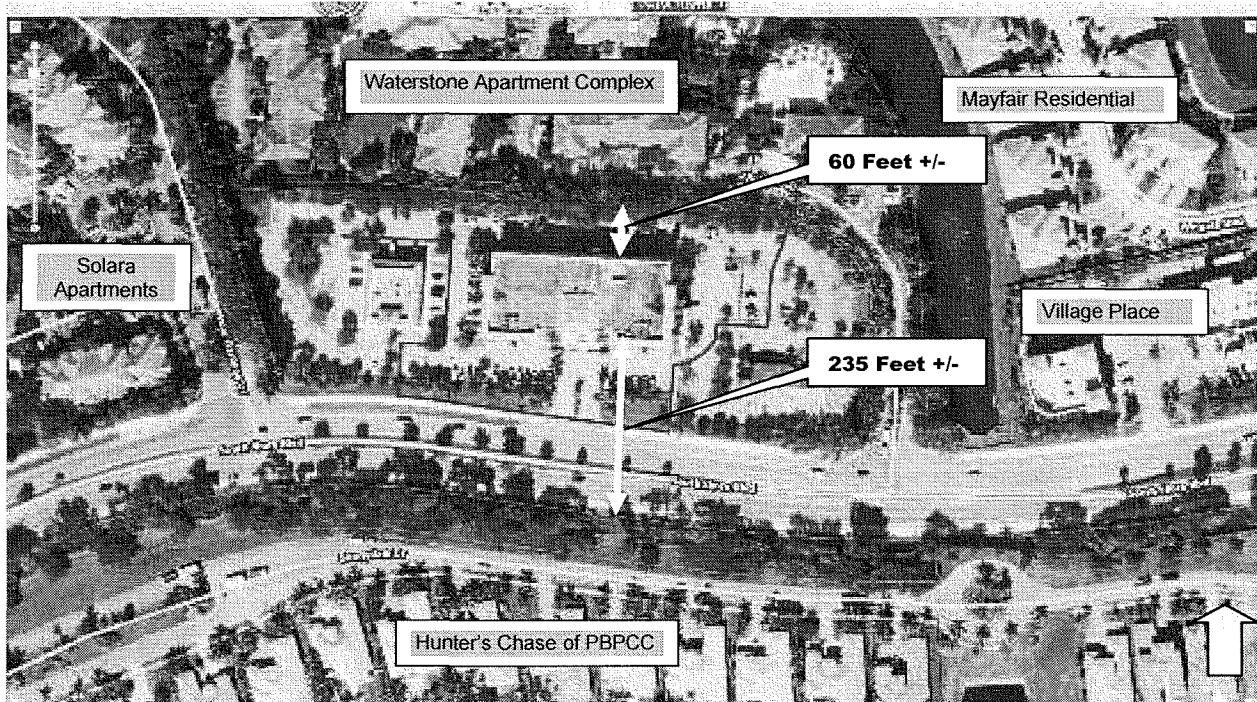
6. Failure to abide by the foregoing conditions will subject the applicant to code enforcement procedures which will include, but will not be limited to, monetary penalty and/or revocation of the Conditional Use for the cocktail lounge and extended hours of operation.

Staff's recommendation to the PZAB was for denial because of the proximity of the subject tenant space to residential development and housing as defined in the Land Development Regulations. In addition, the Village Code Enforcement Office has received several evening noise complaints since it has been open. Approval of extended hours and a change from a restaurant to a cocktail lounge may result in magnification of incidents of neighborhood conflict.

EXHIBIT A LOCATION MAP



Minimum 250 feet required from a residential district for Cocktail Lounge (4COP)



Minimum 300 feet required from residential housing for extended hours of operation

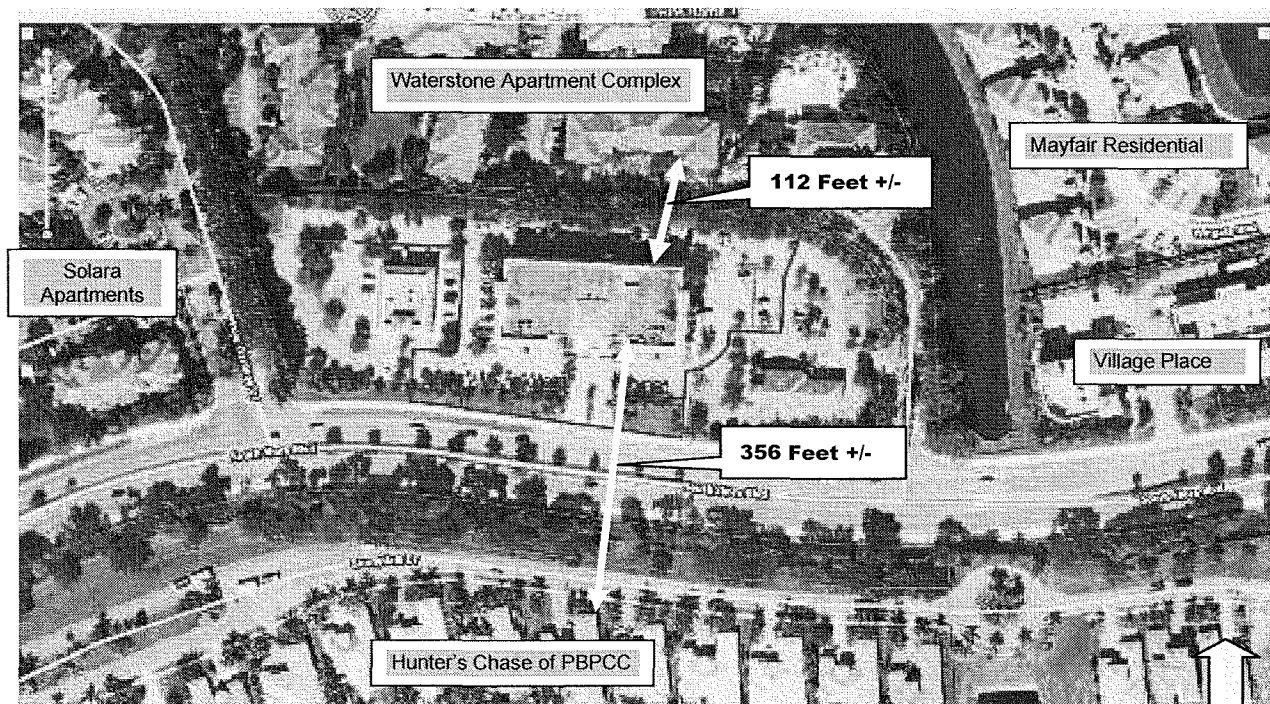


EXHIBIT A

61A-3.0141 Special Restaurant Licenses.

(1) Special restaurant licenses in excess of the quota limitation set forth in subsection 561.20(1), Florida Statutes, shall be issued to otherwise qualified applicants for establishments that are bona fide restaurants engaged primarily in the service of food and non-alcoholic beverages, if they qualify as special restaurant licensees as set forth in subsection (2) of this rule. Special restaurant licensees must continually comply with each and every requirement of both subsections (2) and (3) of this rule as a condition of holding a license. Qualifying restaurants must meet the requirements of this rule in addition to any other requirements of the beverage law. The suffix "SRX" shall be made a part of the license numbers of all such licenses issued after January 1, 1958.

(2) Special restaurant licenses shall be issued only to applicants for licenses in restaurants meeting the criteria set forth herein.

(a) Except in the counties of Alachua, Brevard, Broward, Citrus, for premises with a cocktail lounge or open bar, Dade, Pasco, St. Lucie, Walton, Martin, Nassau, Okaloosa, Okeechobee, Osceola, Hendry, Highlands, Hillsborough, Indian River, Lake, and Orange County with respect to Orlando, Winter Park, and Maitland, each of the above being controlled by general law or special act, a qualifying restaurant must have a service area occupying 2,500 or more square feet of floor space.

1. The required square footage shall not include any space contained in an uncovered or not permanently covered area adjacent to the premises because food service is not available at all times.

2. The required square footage shall be contiguous and under the management and control of a single licensed restaurant establishment.

3. Kitchens, food service areas, pantries, storage rooms, offices, and toilets, used exclusively in the operation of the restaurant shall be included in the required square footage. Measurements will be taken from the outside of qualifying structures or areas.

(b) Except in the counties of Alachua, Brevard, Broward, Dade, Hendry, Highlands, Walton, Hillsborough, Indian River, Pasco, Martin, Nassau, Okaloosa, St. Lucie, Osceola, and Orange County with respect to Orlando, Winter Park, and Maitland, each of the above being controlled by general law or special act, a qualifying restaurant must have accommodations for the service and seating of 150 or more patrons at tables at one time.

1. The tables and seating must be located within the floor space provided for in paragraph (2)(a) of this rule.

2. The tables must be of adequate size to accommodate the service of full course meals in accordance with the number of chairs or other seating facilities provided at the table.

3. Seating at counters used to serve food shall be included in the minimum seating requirements.

(c) Except in those counties and municipalities controlled by general law or special act, as set forth in paragraph (2)(b) of this rule, a qualifying restaurant must have all equipment for the service of 150 full course meals on the premises at one time.

(d) An applicant for an SRX license must either hold, or have applied for, the appropriate restaurant license issued by the Division of Hotels and Restaurants prior to issuance of the temporary SRX license. The restaurant must hold the appropriate restaurant license before it will be eligible for a permanent SRX license.

(e) A qualifying restaurant must comply with all fire safety laws relating to the operation of a restaurant.

(3) Qualifying restaurants receiving a special restaurant license after April 18, 1972 must, in addition to continuing to comply with the requirements set forth for initial licensure, also maintain the required percentage, as set forth in paragraph (a) or (b) below, on a bi-monthly basis. Additionally, qualifying restaurants must meet at all times the following operating requirements:

(a) At least 51 percent of total gross revenues must come from retail sale on the licensed premises of food and non-alcoholic beverages. Proceeds of catering sales shall not be included in the calculation of total gross revenues. Catering sales include food or non-alcoholic beverage sales prepared by the licensee on the licensed premises for service by the licensee outside the licensed premises.

1. Qualifying restaurants must maintain separate records of all purchases and gross retail sales of food and non-alcoholic beverages and all purchases and gross retail sales of alcoholic beverages.

2. The records required in subparagraph (3)(a)1. of this rule must be maintained on the premises, or other designated place approved in writing by the division for a period of 3 years and shall be made available within 14 days upon demand by an officer of the division. The division shall approve written requests to maintain the aforementioned records off the premises when the place to be designated is the business office, open 8 hours per work day, of a corporate officer, attorney, or accountant; the place to be designated is located in the State of Florida; and the place to be designated is precisely identified by complete mailing address.

3. Since the burden is on the holder of the special restaurant license to demonstrate compliance with the requirements for the license, the records required to be kept shall be legible, clear, and in the English language.

4. The required percentage shall be computed by adding all gross sales of food, non-alcoholic beverages, and alcoholic

beverages and thereafter dividing that sum into the total of the gross sales of food plus non-alcoholic beverages.

(b) Restaurants issued special restaurant licenses prior to April 18, 1972 but after September 1, 1969 shall be required to derive at least 30 percent of gross revenues from the sale of food and non-alcoholic beverages.

(c) Restaurants holding special restaurant licenses issued prior to September 1, 1969 are not required to derive any fixed amount of gross revenue from the sale of food and non-alcoholic beverages but must operate as a bona fide restaurant and meet the other requirements of this rule.

(d) Full course meals must be available at all times when the restaurant is serving alcoholic beverages except alcoholic beverage service may continue until food service is completed to the final seating of restaurant patrons for full course meals. A full course meal as required by this rule must include the following:

1. Salad or vegetable;
2. Entree;
3. Beverage; and
4. Bread.

(e) For purposes of determining required percentages, an alcoholic beverage means the retail price of a serving of beer, wine, straight distilled spirits, or a mixed drink.

(4) Establishments obtaining and operating under a temporary initial license as provided in Section 561.181(2), Florida Statutes, or under a temporary transfer license as provided in Section 561.331, Florida Statutes, shall be investigated by the division during said operation and prior to issuance of a permanent license to insure that the establishment is a bona fide restaurant primarily engaged in food and non-alcoholic beverage sales and service and that the requirements of this rule have been met. The failure of an establishment to operate as a bona fide restaurant during said period of time shall result in denial of the application for a special restaurant license. An application for a special restaurant license from an establishment which has had a prior application for a special restaurant license denied during the previous 30-day period will be accepted by the division. The recent denial of the prior application will, however, be deemed a disclosure on the face of the subsequent application of a reason to deny such subsequent application. Accordingly, in such cases, no temporary initial license will be issued for a period of 30 days to allow the division inspectors to ensure that the reason to deny has been abated.

Specific Authority 561.11 FS. Law Implemented 561.20(2)(a)4. FS. History—New 8-23-90, Amended 5-19-91, 10-22-91, Formerly 7A-3.0141.

CHAPMAN LAW GROUP, PLC
ATTORNEYS

rec'd
5/31-2
onp
18 W
The Chancellor Building
12008 South Shore Boulevard
Suite 107
Wellington, Florida 33414
(561) 753-5996 Telephone
(561) 753-9966 Facsimile

May 3, 2012

VIA HAND DELIVERY

Olga M. Prieto
Associate Planner
Village of Wellington
12749 Forest Hill Blvd.
Wellington, FL 33414

Re: Conditional Use Application for The Grill.

Dear Ms. Prieto:

Enclosed is the Conditional Use Application for The Grill. With respect to its contents, please note the following: The owner is presently on vacation and will return after May 14th, after which time he will execute the owner's consent. I have spoken with him directly about the need to have the executed Owner Affidavits to the Village prior to the May 23rd DRC meeting and this does not present a problem for him. Additionally, we have included a 500 foot radius map and tax roll list and mailing labels to reflect the recent amendments to the Code (up from 300 feet). Further, because the conditions surrounding and site plan at Mizner Place have not changed significantly since the past Nicole's CUA, after consultation with Bob Basehart, we have attached the old site plan map and ariel map which we understand will be sufficient. As well, the materials on page 2 of the CUA checklist (items II.a. through b.) do not apply and therefore are not included.

If you have any questions or require additional information, please call me directly or reach me via email.

Thank you for your continued courtesies.

Very truly yours,

CHAPMAN LAW GROUP, PLC

[Signature]
AVERY S. CHAPMAN

encl.

cc: client w/ encl.



WELLINGTON

A Great Hometown...
Let Us Show You!

Planning, Zoning & Building Department

12300 Forest Hill Blvd., Wellington, FL 33414 (561) 753-2430 pzapplications@wellingtonfl.gov

CONDITIONAL USE APPLICATION

INSTRUCTIONS TO APPLICANTS:

1. Please complete all questions on the application. If not applicable, indicate with N/A.
2. Provide required attachments as shown on the attached checklist.
3. Filing Fees to be paid:

I. PROPERTY OWNER AND AGENT INFORMATION

Address: MIZUAR PLACE, LLC City: 75 N.E. 6th Ave. Ste. 103 ST: Delray Beach, FL 33483

Phone: 561 278-9292 FAX: 561 278-9211

Applicant (if other than owner): JUANITO'S RESTAURANT, LLC

Address: 12300 SOUTH SHORE BLVD City: Wellington ST: FL Zip: 33414

Phone: 561 252-4290 FAX: _____

Agent & Company Name: CHAPMAN LAW GROUP, PLC, AVERY S. CHAPMAN, ESQ.

Address: 12008 SOUTH SHORE BLVD City: Wellington ST: FL Zip: 33414

Phone: 561 753-5966 FAX: 561 753-9966 / ASCES@1PCS.COM

Consultants: If applicable to your request, please attach a separate list of all consultants that will provide information on this request. You should include the name, address, telephone number, and fax number as well as the type of professional service provided.

II. CONDITIONAL USE REQUEST

Include a brief description of proposed use(s) including density/intensity and summary of request: _____

FOR CONTINUED OPERATION OF A FULL SERVICE RESTAURANT, CURRENTLY HOLDING
SRL LICENSE, TO OPERATE UNDER A 4COP LICENSE WITHIN 500 FEET OF
A RESIDENTIAL DEVELOPMENT. NOTE: NO OUTDOOR ENTERTAINMENT IS PROPOSED;
EXTENSION OF HOURS OF OPERATION UNTIL 2 A.M. PURSUANT TO ORDINANCE # 2011-04.

III. PROPERTY LOCATION

A. Is the subject property located within one mile of another municipality? [] yes [X] no

If 'yes' please specify: _____

B. Property Control Number (PCN): If additional PCNs, list on a separate sheet and attach to the application.

PCN: [7][4]-[4][1]-[4][4]-[1][5]-[1][9]-[0][0][2]-[0][4][0][0]

C. Section: _____ Township: _____ Range: _____ Total Acreage of Subject Property 2.69

D. Project Name: THE GRILL

E. Project Address: 12300 SOUTH SHORE BLVD, WELLINGTON FL 33414

F. General Location Description (proximity to closest major intersection in miles or fractions thereof):

APPROX. 600 YARDS NORTH ON SOUTH SHORE BLVD. FROM
THE BIG BLUE - SOUTHSHORE BLVD. INTERSECTION.

- A. Zoning Designation: PUD Future Land Use Designation: _____
- B. Existing Use(s) on Property: OFFICE / RETAIL / RESTAURANT
- C. Proposed Use(s): FULL SERVICE RESTAURANT

V. PROJECT HISTORY

(List in sequence from first zoning application to most recent – attach additional page if necessary):

Petition Number	Request	Action	Date	Resolution Number

VI. ADJACENT PROPERTIES

Adjacent Property to the:	Land Use Designation	Zoning Designation	Existing Use(s) of Property	Approved Use(s) of Property*	Petition & Resolution Number
NORTH	RESIDENTIAL	PUD	APARTMENTS - RESIDENTIAL "H"		
SOUTH	ROAD & RESID.	PUD/M/SE	RESIDENTIAL "C"		
EAST	RESIDENTIAL	PUD	COMMUNITY COMMERCIAL		
WEST		A11/SE(PUD)	COMMUNITY COMMERCIAL		

- * If adjacent land supports a previous approval by Wellington, please include a brief description of the approved use(s) and the approved square footage or number of dwelling units.

VII. COMPLIANCE

(Attach additional sheets if necessary)

- A. Is property in compliance with all previous conditions of approval and/or applicable Code requirements? If no, please explain, ☒ yes ☐ no : _____
- B. Code Enforcement Case Number(s): _____

VIII. TABULAR DATA

PROJECT DATA	LAST BCC OR VC APPROVAL	LAST DRC APPROVAL	REQUIRED PER CODE	PROPOSED	+/- CHANGE
Acreage (total gross)					
Acreage (total net)					
Lot Frontage (ROW feet)					
Lot depth (maximum)					
Lot Width (minimum)					
Total Dwelling Units (du's)					
# of Single Family (SF)					
# of Zero Lot Line (ZLL)					
# of Townhouses (TH)					
# of Multi-Family (MF)					
Density					
Total Sq. Footage					
Commercial SF					

Industrial SF	Wellington Council Meeting September 11, 2012				Page 792 of 1013
Other SF					
# of Rooms					
# of Seats					
# of Beds					
# of Children					
# of Drive-Thru Lanes					
Floor Area Ratio (FAR)					
% Lot Coverage					
Maximum Structure Height					
Impervious Surface Area					
Open Space Area					
Recreation Area					
Preserve Area					
Civic Area					
Institutional Area					
Total Parking Spaces					
Handicap Parking Spaces					
# of Access Points/Roads					
# of Loading Areas/Spaces					
Accessory Structures (% FAR)					
Setbacks: Front/Rear					
Side Interior/Side Corner					

IX. APPLICANT'S STATEMENT OF JUSTIFICATION
(Attach additional sheets if necessary)

The applicant is to explain how the request conforms to the following:

- A. That the proposed request is consistent with all elements of the Comprehensive Plan.

PLEASE SEE ATTACHED STATEMENT OF JUSTIFICATION
("STATEMENT")

- B. That the proposed request is in compliance with Section 6.6 of the LDR (Supplementary Regulations).

PLEASE SEE ATTACHED STATEMENT

- C. That the proposed request will ensure general compatibility with adjacent properties and other property in the district (use and character).

PLEASE SEE ATTACHED STATEMENT

- D. That the design of the proposed request will minimize adverse effects, including visual impact and intensity of the proposed use on adjacent lands.

PLEASE SEE ATTACHED STATEMENT

- E. That satisfactory provisions have been made for public facilities.

PLEASE SEE ATTACHED STATEMENT

- F. That the design of the proposed request will minimize environmental impacts, including but not limited to water, air, stormwater management, wildlife, vegetation, wetlands and natural functioning of the environment.

PLEASE SEE ATTACHED STATEMENT

- G. That the proposed request will result in logical, timely and orderly development patterns.

PLEASE SEE ATTACHED STATEMENT

- H. That the proposed request complies with all Code standards for use, layout, function and general development characteristics.

PLEASE SEE ATTACHED STATEMENT

- I. That the proposed request is not out of scale with the needs of the neighborhood or Wellington.

PLEASE SEE ATTACHED STATEMENT

OWNER ACKNOWLEDGEMENT

I/We: _____, do hereby swear/affirm that I/we am/are the owner(s) of the property referenced in this application

I/We certify that the above statements and the statements or showings made in any paper or plans submitted herewith are true to the best of my/our knowledge and belief. Further, I/we understand that this application, attachments and fee become part of the official record of the Planning & Zoning Department of Wellington and the fee is not refundable. I/We understand that any knowingly false information given by me/us will result in the denial, revocation or administrative withdrawal of the application or permit. I/We further acknowledge that additional information may be required by Wellington in order to process this application.

I/We further consent to Wellington to publish, copy or reproduce any copyrighted document for any third party submitted as part of this application.

Signature(s) of Owner(s) _____

Print Name(s) _____

CONSENT STATEMENT

Owner to complete if using agent/representative

I/We, the aforementioned owner(s), do hereby give consent to _____ to act on my/our behalf to submit this application, all required material and documents, and attend and represent me/us at all meetings and public hearings pertaining to the request(s) and property I/we own described in the attached application. Furthermore, as owner(s) of the subject property, I/we hereby give consent to the party designated above to agree to all terms or conditions that may arise as part of the approval of this application for the proposed use.

Signature(s) of Owner(s) _____

Print Name(s) _____

NOTARY

STATE OF FLORIDA

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20____ by _____ He/She is personally known to me or has produced _____ as identification and did/did not take an oath.

(Signature of Notary) My Commission Expires: _____

(Name – Must be typed, printed, or stamped)

(NOTARY'S SEAL OR STAMP)

NOTICE AFFIDAVIT

STATE OF FLORIDA

COUNTY OF Palm Beach

Before me this day personally appeared LAWREN LAM who being duly sworn, deposes and says:

1. The accompanying Property Owners List is, to the best of his/her knowledge, a complete and accurate list of all property owners, mailing addresses and property control numbers as recorded in the latest official tax rolls of the Palm Beach County Property Appraiser for all property within three hundred (300) feet of the below described parcel of land.
2. The accompanying Property Owners List included, to the best of his/her knowledge, all affected municipalities and/or counties, in accordance with Wellington notice requirements and/or policies.
3. A tax map highlighting the properties located within ^{five} ~~three~~ hundred feet of the parcel of land that is the subject of the request is attached as part of this application. The accompanying Property Owner's list contains the required information for all properties highlighted on the tax map.
4. Public notice, which is his/her obligation to provide, will be in accordance with Wellington requirements

The property in question is: ☒ legally described as follows ☒ see attached legal description

PARCEL B of MIZNER PLACE, according to the plat thereof, recorded in PLAT BOOK 87, Page 163, Public Records of Palm Beach County, Florida.

[Signature]
Signature

Lawton Lam
Print, type or stamp name here

NOTARY

STATE OF FLORIDA

COUNTY OF Palm Beach

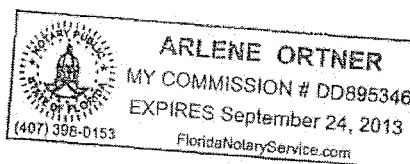
The foregoing instrument was acknowledged before me this 3rd day of May, 2012

By Lawton Lam, who is personally known to me or has produced _____ as identification and who did/did not take an oath.

[Signature]
Signature of person taking Acknowledgement

Printed Signature

My Commission Expires:



Planning, Zoning & Building Department

12794 Forest Hill Blvd., Suite 23, Wellington, FL 33414 (561) 753-2430 Fax (561) 753-2439

**CONDITIONAL USE
SUBMITTAL CHECKLIST****I. GENERAL**

PLEASE CHECK

YES	NO	N/A	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	a. A completed application signed by owner, agent and/or applicant. Agent's authorization or power of attorney must be attached if applicant is other than owner.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	b. Required application fees
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	c. ^{511 (6)} Twelve (12) copies of a warranty deed including property control number or folio number and legal description of the property.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	d. A recent aerial photograph of the site with a minimum scale of 1" = 300'
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	e. Ten (10) copies of signed and sealed survey (not more than a year old) including any and all easements of record (referenced by OR Book and page, prepared by a surveyor registered in the State of Florida.)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	f. A list of all property owners within a ^{500 feet} three hundred (300) foot radius of boundary lines of the subject property from the most recent tax roll information as provided by the Palm Beach Property Appraiser's Office.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	g. Executed affidavit signed by the person responsible for completing the property owner list.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	h. Legal description of property (8.5' x 14' with 1' margins) and on disc (Word format)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	i. Two (2) sets of POSTAGE PAID envelopes with the typed names of the owners within a three hundred (300) foot radius of the boundary lines of the subject property, Wellington's return address and completed certified mail cards.

II. DEVELOPMENT CONCEPT OR SITE AND DEVELOPMENT PLAN (TWELVE COPIES)

(No larger than 24" x 36" with scale not smaller than 100' to an inch)

PLEASE CHECK			
YES	NO	N/A	
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	a. On disc the concept or site and development plan including but not limited to scale, date, north arrow, vicinity sketch, project name and gross acreage
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	b. The boundaries and dimensions of the property and its relationship to the surrounding road system including the width of the existing travelway.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	c. The location of existing easements, watercourses, section lines, water and sewer lines, well and septic tank location, and other existing important physical features in and adjoining the project to within 100'.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	d. The location and dimensions of existing manmade features such as existing roads and structures with indication as to which are to be removed, renovated or altered.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	e. The location and delineation of existing trees and information as to which trees will be removed.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	f. Identification of surrounding land use, zoning, and existing buildings within 100 feet of the site as well as the zoning of the petitioned site.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	g. Estimated square footage of the structures, the number of employees, estimated seating, and the estimated number of non-residential users of the facility, such as members, students, and patients.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	h. A layout of the proposed lots and/or building sites including the following: finished floor elevation, common open areas, generalized landscaping and buffer zones, internal circulation patterns including off-street parking and loading facilities, total project density, percentage of building coverage, percentage of open space areas, the shape, size, location and height of all structures.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	i. Proposed phasing of construction for the project, if applicable.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	j. Proposed hours of operation for non-residential uses.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	k. A signed and sealed drainage statement and conceptual drainage plan.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	l. Size, location and orientation of signs.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	m. Proposed lighting of the premises.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	i. A signed and sealed traffic impact statement addressing at minimum: additional roadway needs, intersection improvements, traffic control devices, future right of way dedications, distribution and assignment of traffic.

**Application Statement of Justification
In Support of Conditional Use Application
of Juancito's Restaurant, LLC**

I. Introduction.

This Application for a Class "A" Conditional Use, made pursuant to § 5.4.5. of the Village LDR, is consistent with the previously-approved, historic use of the site, the former Nicole's Tavern restaurant business. The Applicant operates in exactly the same space as the prior restaurant. No site plan or design change approvals are necessary. The Applicant currently operates a full service restaurant, serving lunch and dinner 7 days a week, under a current 4COPSRX license issued by DABT.

Because of the seasonal influx of customers surrounding the Winter Equestrian Festival, polo and other Winter activities, as well as the demand by both annual and Winter residents, and because the Applicant's restaurant is new, for some limited time in the past 6 months, there was a seasonal up-tick in business where alcohol sales exceeded food sales. While this balance has corrected to more food sales than alcohol now that Season has ended, out of an abundance of caution, the Applicant believes it is necessary to shift to operation to a 4COP license from its current 4COPSRX license. However, upon application to the Village for approval of the transition to a 4COP license, Applicant was advised that under the current Wellington Code, should the Applicant operate under a 4COP license, it would be re-classified as a "lounge" (although not an accurate description for Applicant's full service restaurant) and therefore require a Conditional Use Variance because the Applicant's restaurant would does meet the separation from residential use requirements. (See attached April 26, 2012 correspondence from Village Associate Planner Olga M. Prieto). Therefore, the within CUA is submitted to seek that approval and to seek extension of hours of operation to closing and clean up by 2 a.m. pursuant a development order under §6.6.2.F.1.b.vii(f)(ii) of the LDR.

Finally, it should be noted that Applicant is not seeking any exception or permission for outdoor entertainment, which was subject to an approved Conditional Use for the former Nicoles' Tavern restaurant. (See Petition # 1998-5 CUI, approved January 9, 2007).

II. CUA Section IX Statements.

A. The proposed request is consistent with all elements of the comprehensive plan.

As set forth in the Introduction, no site plan approvals or amendment to the Mizner Place Commercial Development, originally Tract 46(B) of the Wellington PUD, is required. The historic use of the property remains unchanged; in fact, the Applicant is not seeking to permit outdoor entertainment (previously approved for the prior tenant). Therefore the within CUA is actually *less burdensome* upon adjoining landowners and residents.

**CUA Statement of Justification
of Juancito's Restaurant, LLC
Page 2 of 3**

B. The proposed request is in compliance with Section 6.6 of the LDR.

The proposed request, containing no design changes to the property, demonstrates compliance with the following architectural compatibility standards. (Chapter § 6.6.3). No other sub-sections of Section 6.6 apply to the within request.

C. The proposed request will insure general compatibility with adjacent properties and other property in the district.

Because this Application is for the continuation of a previously-approved, historic use of the property and no significant changes to the adjacent properties and other property in the district have occurred, the proposed request continues the history of general compatibility. Further, the past approval of the application of the previous tenant of the property, Nicole's Tavern, which allowed outdoor entertainment (which this Applicant is *not* requesting) demonstrates that the continued use of the property as a restaurant with entertainment (whether inside or out) is indeed compatible with the adjacent and other properties.

D. The design of the proposed request will minimize adverse effects, including visual impact and intensity of the proposed use on adjacent lands.

There are no design changes from the previously-approved, historic use and previous use of the property. Applicant is willing to accept reasonable conditions that in the opinion of the Village would otherwise minimize adverse effects.

E. Satisfactory provisions have been made for public facilities.

The Applicant is a licensed and operating restaurant and complies with all relevant laws and ordinances as to public facilities.

F. The proposed request will minimize environmental impacts.

There are no site plan or design changes from the previously-approved, historic use and previous use of the property.

G. The proposed request will result in logical, timely and orderly development patterns.

The continuation of the historic use of the property as a restaurant is consistent with the development pattern of the surrounding area and the Village as a whole. The continued success of amenities such as the restaurant of Applicant, are an integral part of the growth of the Village as businesses that support both the seasonal and annual residents. The request for extension of hours of operation to closing and clean up by 2 a.m. pursuant to a development order under §6.6.2.F.1.b.vii(f)(ii) of the LDR, is not inconsistent with the need for places of indoor public entertainment and is consistent with the hours of operation permitted other restaurants within the Village having approved conditional uses.

**CUA Statement of Justification
of Juancito's Restaurant, LLC
Page 3 of 3**

H. The proposed request complies with all Code standards for use, layout, function and general development characteristics.

As a continuation of a previously-approved historic use, which actually reduces the outside use of the property (because no outdoor entertainment is requested by this Applicant), the proposed request is therefore consistent and otherwise complies with all Code standards. The continued use of the site for a restaurant with a 4COP license promotes the purpose and intent of an enlightened and imaginative approaches to community planning (§ 6.8.2.A. PUD), the establishment of private civic and recreation uses to serve the PUD (§ 6.8.2.A.4. PUD), provides a commercial use to serve the residents of the PUD (§ 6.8.2.A.5. PUD) and provides for the provision of flexible property development regulations to promote innovative and quality site design (§ 6.8.2.A.8. PUD)

I. The proposed request is not out of scale with the needs of the neighborhood or Wellington.

The previously-approved, historic use was as a full service restaurant with entertainment. The Applicant seeks to continue that use with the benefit that the Applicant is not providing any outdoor entertainment, unlike the previous tenant of the property. The full-service restaurant of Applicant, serving lunch and dinner, fulfills a need for the local neighborhood and continues to be in scale with the neighborhood. Applicant notes that this use is consistent with Village Council Resolution R99-53, adopted on July 20, 1999, which modified the Wellington PUD Master Plan for Tract 46(B) to allow commercial development, including *two* restaurants (there has been and presently is only Applicant's). That site plan was certified on September 10, 1999 by the Village DRC, as have been subsequent minor site plan amendments for commercial development at the site.



A GREAT HOMETOWN

Council
Bob Margolis, Mayor
Howard K. Coates, Jr., Vice Mayor
Matt Willhite, Councilman
Anne Gerwig, Councilwoman
John Greene, Councilman

Manager
Paul Schofield

April 26, 2012

Avery S. Chapman, Esq.
Chapman Group, PLC
12008 South Shore Boulevard, #107
Wellington, Florida 33414

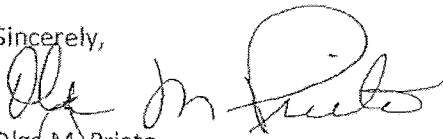
Re: Juanito's Restaurant, LLC d/b/a The Grille Restaurant
Application for Change in License Type 4COPSRX to 4COP

Dear Avery,

Please be advised the Planning and Zoning Division cannot sign off on The Grille Restaurant's recent application to change their former type license series from 4COPSRX to 4COP until a Conditional Use application has been submitted for public hearings and ultimately approved by Wellington's Council. The new Juanito's Restaurant can continue to operate under the current 4COPSRX license series but must be in compliance with Wellington's Zoning regulations. As we discussed, you will need to submit a Conditional Use application on behalf of the restaurant owner for a Cocktail Lounge if the alcohol revenues continue to exceed food sales. The tentative schedule if submitted by May 3rd would be the Development Review Committee on May 23rd, the July 4th Planning, Zoning and Adjustment Board meeting which will likely be rescheduled and a tentative August 14th Wellington Council meeting.

I have already emailed you a copy of the former tenant (Nicole's Tavern) Conditional Use application for reference in preparing your application. Enclosed I'm returning to you The Grille Restaurant Division of Alcoholic Beverages and Tobacco Change in Series Type Application you submitted, which as mentioned above we are unable to approve at this time. If you need any further information, please do not hesitate to contact me by email or by phone at 753-2561.

Sincerely,



Olga M. Prieto
Associate Planner

End (1)

Cc: David Flinchum, ASLA, AICP, Planning and Zoning Manager
Robert Basehart, Growth Management Director
Jeff Kurtz, Village Attorney

PALM BEACH COUNTY COMMISSION ON ETHICS
MEMORANDUM OF INQUIRY

To: Alan S. Johnson, Executive Director
From: Mark E. Bannon, Investigator
Re: C12-012 – John J. Greene, Councilman, Village of Wellington

- **Background**

This Inquiry is based on a sworn Complaint against Village of Wellington (Wellington) Councilman John J. Greene, and filed with the PBC Commission on Ethics (COE) by Juan Gando, a resident of Wellington, and part owner of two (2) restaurants located within Wellington. This Complaint was properly signed by Juan Gando, and notarized on September 27, 2012. According to the addendum dated September 26, 2012 and attached to the Complaint, which details the specific facts and circumstances that are the basis of the complaint, Gando has an ownership interest in "The Grille," a restaurant located at 12300 South Shore Blvd., and in "Oli's Fashion Cuisine," a restaurant located at 10610 W. Forest Hill Blvd.

The basis of this complaint is the Respondent's participation in discussions, and voting on two (2) separate occasions at Wellington Council Meetings, involving a Conditional Use Application filed with Wellington by "The Grille." The Complaint alleges that Respondent's participation and votes on these occasions were in violation of the Code of Ethics, based on the "person bias, agenda and nepotism of Mr. Greene." By way of providing background information, the Complainant alleges that "Players Club," which is owned and operated by Neil Hirsch, is a direct competitor of both The Grille and Oli's Fashion Cuisine. The Complaint further alleges that;

"Councilman Greene is an admitted close personal friend of Mr. Hirsch and may also be involved in his trust. Twice in the past 60 days, Mr. Greene has either been forced to or has chosen to recuse himself from two separate Agenda items before the Village Council that directly affect the business and personal dealings of Mr. Hirsch: consideration of the Dressage Festival show grounds and consideration of the Blue Cypress residential development."

In its Conditional Use Application, The Grille requested two (2) use changes concerning the operation of The Grille restaurant. The first involved a request to extend its hours of operation Monday - Wednesday from 11:00 PM to Midnight, and Thursday – Sunday from 11:00 PM to 2:00 AM. The second request was to allow the business to operate under a 4COP state issued liquor license, which was different than the one they operated under at the time (4COP-SRX).¹ Because of the location of The Grille within what is known as the "Wellington Planned Unit Development" (Wellington PUD), there are restrictions on the hours of operation of any business within a distance of 300 feet of any residential community. First, they cannot open for business prior to 6:00 AM, and must close by 11:00 PM, unless extended by a development order approved by the Council. Second, a business operating under a 4COP liquor license must be at least 250 feet from such developments,² an exception to which also requires approval of the Village Council. (The staff report lists the location as within 250 feet of at least two (2) residential developments, Waterstone Apartments and PB Polo Club's Hunter's Chase).

The Complaint alleges that representatives of The Grille were required to appear at a Village Council meeting on September 11, 2012, where their application was being discussed. The Complaint also states that at this meeting, Respondent was invited to recuse himself from the discussion and vote on the Conditional Use Application, however, according to the addendum to the Complaint;

¹ As a restaurant, The Grille operated under a state liquor license known as a 4COP-SRX. The SRX designation means "special restaurant exception," and allows a restaurant to sell alcoholic beverages for consumption on the premises, but requires that a business operating under a 4COP-SRX license must derive at least 51% of their gross revenue sales from food or non-alcoholic beverages. In their Application, The Grille requested they be allowed to operate under a 4COP license, which is a state liquor license that allows a business to sell alcoholic beverages for consumption on the premises and for package sale, but which has no food to liquor ratio requirement. This license is sometimes referred to as a "regular" or "cocktail lounge license," and was referred to in this manner at both Village Council meetings, and in the Wellington staff report.

² Section 6.8.2.F.1.b.vii.(f)(ii), regarding commercial use within 300 feet of a residential community, and Section 6.4.4., subsection 68, which requires any "cocktail lounge" to be at least 250 feet from a residential community; *Wellington Land Development Regulations*.

"Mr. Greene refused to recognize his conflict and did not recuse himself. Instead, he offered the motion to affect The Grille's Conditional Use Application by granting The Grille part of the extended hours and, according to the verbatim record, allowing the 4COP license. Our Application was then passed, without prejudice to return to the Council. Mr. Greene should not have been voting on The Grille's Application given his avowed relationship with Mr. Hirsch and his previous recusals in Hirsch-related matters."

"The problem with Mr. Greene was then compounded when, 3 days after the vote, he instructed the Village attorney, Mr. Kurtz, to inform our lawyer that Mr. Greene now claimed he was confused and did not mean to allow The Grille its 4COP license. He then directed staff to place the matter back on the September 26, 2012 Agenda before the Village Council for further deliberation."

Based on this action, the Complaint states that at the September 26th Village Council meeting, Mayor Margolis was presented with a demand for recusal by the Grill's attorney, which was then given to Respondent. Respondent again refused to recuse himself and, "At Mr. Greene's urging, on September 26th, the Village Council, by a vote of 3-2 then reversed its earlier decision to allow the 4COP license and also removed the without prejudice section of the September 11th resolution, leaving The Grille no ability to come before the Council until one year has passed."

The Complaint further alleges that due to the actions of Respondent and, "Despite the direct relevance of The Grille's application to the Players Club and Mr. Hirsch, Mr. Greene not only saw fit to vote (twice) on our application, but even caused the Council to change its former decision, all to the detriment of The Grille and to the direct benefit of Players Club and Mr. Hirsch.

Finally, the Complaint alleges that Respondent has no visible means of employment, and has accepted private housing from Mr. Hirsch. It asks that the COE investigate whether Respondent is "being paid in any way, by Mr. Hirsch or any of his companies." The Complaint also makes reference to the possibility that Respondent may be mentioned in Mr. Hirsch's Trust, but does not expound on this statement as to any personal knowledge, or offer any evidence of such a relationship.

Attached to the Complaint is a letter dated September 11, 2012 from the Avery S. Chapman, Chapman Law Group, PLC, addressed to Wellington Mayor Bob Margolis. The letter demands that Respondent recuse himself from all matters concerning The Grille CUA Petition 2012-017 CU2 (The Grilles Conditional Use Application as presented to the Council as a Resolution), based on his relationship to Neil Hirsch, and the fact that the Players Club operates within the Wellington PUD with extended hours under a 2006 settlement agreement listed as Monday to Thursday, 5PM to 1AM, and Friday to Sunday, 5PM to 2AM. Attorney Chapman states in the letter that as a direct competitor of Player Club, The Grilles petition directly implicates the financial interests of Mr. Hirsch, and therefore requires Respondent to recuse himself from the matter.

Respondent did not recuse himself from either discussion or voting on the Conditional Use Application of The Grille restaurant at two Village Council meetings, and so I began an Inquiry into these events.

- **Inquiry**

I reviewed the material submitted by the Complainant. I was also aware the issue of the relationship of Respondent to Neil Hirsch had been previously addressed by the COE by way of a sworn complaint filed (C12-003, in which I was the assigned COE Investigator), and two (2) separate relevant Requests for Advisory Opinion, RQO 12-065³ and RQO 12-045⁴. I therefore reviewed both this Inquiry, and the Advisory Opinions published by the COE in June and October 2012.

In both RQOs and Complaint C12-003, Respondent was linked to Neil Hirsch. The Complainant in C12-003 alleged that Hirsch had financially assisted Respondent Greene's election to the Wellington Council. However, a more relevant issue to this Inquiry was addressed in RQO 12-065, when Village Attorney Jeffery

³ RQO 12-065, rendered by the COE on October 4, 2012, advised that unless an official uses his or her office to corruptly secure a special financial benefit for another, there is no prohibition against voting or participating in matters involving a friend, where there is not a financial, fiduciary or familial relationship between the parties as provided in Art. XIII, §2-443(a)(1-7).

⁴ RQO 12-045, rendered by the COE on June 7, 2012, advised that a gift of housing from a personal friend valued at more than \$100 annually in the aggregate is prohibited where the friend is a director of a civic organization, and that organization is a principal or employer of a lobbyist, but, not if the giver is not a vendor, lobbyist, principal or employer of a lobbyist, or unless given for some improper purpose.

Kurtz specifically addressed Greene's acceptance of a gift of temporary housing from Hirsch between June 9, 2012 and August 15, 2012, valued at \$2,948. At the time he was living in housing provided by Hirsch, Respondent had two (2) matters come before Council concerning Hirsch's personal or business interests. As pointed out by Attorney Avery in his letter of September 11th, Respondent did recuse himself from both of these votes.

At least partially due to these abstentions, the COE opined in RQO 12-065, "Based upon the facts and circumstances presented, there is no indication that Councilman Greene accepted a gift from Mr. Hirsch in exchange for a future vote, official action or legal duty performed." However, this opinion was rendered prior to the Respondents participation and vote on the instant matters. It should also be noted that Village records indicate that the initial presentation to the Village Council by Attorney Chapman as agent for The Grille was completed on August 28, 2012, (not September 11th as the Complainant stated), and the second Council discussion and vote was completed on September 12, 2012 (not September 28th as listed in the Complaint). Based on this timeline, the initial discussion and vote by Respondent occurred less than two (2) weeks after he moved from Hirsch's property.

I obtained material from the Village of Wellington website (www.ci.wellington.fl.us) concerning Respondent's application before the Village Council. I reviewed the agenda for the August 28, 2012 regular Council meeting, which listed Resolution R2012-47 (The Grille Conditional Use) under item #7A, and for September 11, 2012, which listed under Item #8C, "Clarification of Motion Approving The Grille's Conditional Use Application," as well as the "Agenda Item Summary" for both dates (the minutes were not yet approved and posted). In reviewing this material, I learned that when this material was initially presented by staff to the Wellington Planning, Zoning and Adjustment Board (PZAB) for consideration, staff recommended against allowing the conditional use based on the location being within the Wellington PUD, and within 250 feet of residential property. However, at their July 11, 2012 meeting, the PZAB voted unanimously (6-0) to recommend approval of the Conditional Use Application with conditions. These conditions, as reported in the staff report for the Council, included; that the business operate with a 4COP liquor license, but in the same manner as a restaurant with a 4COP-SRX license, specifically remaining consistent with the 51% food to liquor requirement on an annual basis, that it adhere to all noise restrictions, not allow outdoor entertainment, that this conditional use was non-transferable, and that the owner file a yearly affidavit with documentation of The Grille's compliance with these conditions. I verified this information by watching a video webcast of the July 11th PZAB meeting.

I watched the video webcast of the regular Village Council meeting held on August 28, 2012 at 7:00 PM. When public hearing was opened for this matter (at approximately 58:15 of the video), Wellington Growth Management Director Bob Basehart made the staff presentation, discussing the two (2) separate issues involved in the Application for Conditional Use (request for extended hours of operation, and request to be allowed to operate under a 4COP liquor license). He then went on to explain the significance of each request as it relates to the Applicant. Basehart also advised that staff's recommendation to PZAB was to deny this application, because it is in conflict with the current land use requirements under the Wellington code, as discussed earlier. Basehart also advised that the Players Club does operate under a 4COP license, although the Village requires it to operate on an overall yearly basis as if it was operating under a 4COP-SRX license, and so requires that the Players Club maintain the 51% to 49% food to liquor ratio only on an annual basis. The state requires that this ratio be maintained on a month-to-month basis. Basehart then discussed some noise complaints that had been filed against The Grille in January and February, but agreed that there were no recent complaints.

Village Attorney Jeffery Kurtz then stated the conditions under which the Players Club operates, both in extended hours and with a 4COP license are the result of a settlement agreement with the Village that was agreed to in 2003. He also reiterated that while Players Club does operate under a 4COP license, it has an annual food to liquor ration of 51% to 49%, similar to that of the state 4COP-SRX requirement. Kurtz then stated that the noise complaints from January and February were corrected, and there have been none since. At this point (approximately 1:32:50 of the webcast), Kurtz stated that it would be appropriate for all Council members to disclose any "ex parte communications" they may have had outside of this meeting about this issue. Councilman Greene at this point disclosed that he had met with a representative of Players Club, with neighbors, and with Village staff. Each of the other Council members also reported their ex parte communications, which included the applicant, staff and residents.

After this disclosure, there was further discussion between the Council members and staff. At this point, (approximately 1:33:45 of the webcast), Attorney Avery Chapman, representing the Applicant, made a presentation to the Council, followed by the two owners of The Grille, Dustin Parfit and Juan Gando (Complainant). During the presentation, Complainant advised that he had purchased a 4COP license for The Grille on January 4, 2012, not being aware that he had to have Council approval to use this license.

Complainant's presentation was followed by the Mayor closing the public discussion portion of the hearing, and discussion among the Council members. Finally (approximately 3:53:05 of the webcast), Councilman Greene made a motion which was seconded by Councilman Wilhite. The motion was interrupted several times as Council members spoke, and when finally offered it was not clear what the actual motion entailed, except that it was given in two (2) different parts to address the two (2) separate issues before the Council. When I viewed the webcast, it appeared to me that the motion actually had three (3) parts, which were:

1. That The Grille would operate with a 4COP-SRX license, but that the 51%-49% food to liquor requirement would be an annual requirement, much as the Players Club has (passed 5-0);
2. That the hours of operation would be extended until midnight on Monday – Wednesday, and until 1:00 AM on Thursday – Sunday, but that there would be no outside entertainment or food service after 11:00 PM any day (passed 4-1); and
3. That both motions were made without prejudice, and could be brought back before the Council prior to the passage of a year for reconsideration of further extended hours (passed 5-0).

It should be noted that because of the discussions and corrections during the motion, even after watching this portion of the webcast several times, I was unclear as to the terms of the motion brought by Councilman Greene.

I next reviewed the video webcast of the Council meeting held on September 11, 2012. The matter of The Grille's Conditional Use Application was brought back because the Resolution written by staff from the August 28th meeting did not comport with what was the intent of the motion, according to Respondent. He spoke to Village Attorney Kurtz, who apparently advised him that if this was true, the motion needed to be brought back to Council for clarification. Respondent then wrote a memorandum to Village Manager Paul Schofield requesting the matter be placed back on the agenda for the September 11th meeting. Specifically, within this memorandum to Schofield, Respondent states, "it was not my intent to allow the applicant to operate under a 4COP license, which he obtained prior to village approval. The applicant should operate with a 4COP-SRX license and meet whatever state requirements for the percentage of food/alcohol sales."

During the September 11th Council meeting, this "clarification" issue was 8C on the agenda, and was not heard until late in the proceedings (at approximately 3:37:35 of the video). Village Attorney Kurtz discussed the Applicant's written demand that Respondent recuse himself from the proceedings. However, Respondent declined to do so, stating he had consulted with "in-house counsel" and that his mere friendship with Neil Hirsch, when they have no business relationship, was not sufficient grounds under "the statute" to allow him to recuse himself. Attorney Chapman asked to speak on the matter, but was told that the public hearing portion had been closed. However, Kurtz did advise Council that they could allow Chapman to speak should he wish to do so.

At this point, Respondent discussed that after the last meeting, he received a copy of staff's Resolution, and believed it did not accurately reflect the motion he made, stating that he never intended The Grille to operate under a 4COP license, but a 4COP-SRX license with the additional Village audit requirement. Councilman Wilhite (who had seconded the motion at the August 28th meeting), stated he believed that what was offered was that the Applicant could operate under a 4COP license, with the added conditions of the annual food to liquor ratio requirement. He also pointed out that under a 4COP-SRX license, there was no need to have an audit requirement since the state performs this function. At this point, Respondent advised that he only added the audit requirement to his motion because staff had recommended it. Councilman Wilhite then stated he thought his second at the August 28th meeting was for something different than what is being said now, and wished to withdraw his second on this motion.

There was several minutes of discussion on the motion, and Attorney Kurtz states that the “better way” to put the motion is to say that the application as to Conditional Use as a cocktail lounge (4COP) is denied. Respondent made a motion (at approximately 3:49:50 of the video). At this point (approximately 3:51:10 of the video), Attorney Chapman begins to speak and is told he is out of order. After which the motion by Respondent is seconded by Councilman Wilhite (at approximately 3:52:07 of the Video). Vice-Mayor Coates then asks to re-open the public hearing before the motion is voted on (approximately 3:52:10 of the video).

After further discussion, Attorney Chapman is given twenty (20) minutes to speak to the Council, at which time he addresses the recusal request, and then advises that the extension of hours alone does not help the business, without the ability to have conditional use of the 4COP liquor license based on an annual 51% to 49% liquor to food ratio, because under a 4COP-SRX license, the state can monitor this ratio daily. During the equestrian season, this ratio will be off due to the price of fine wines, but will be corrected on an annual basis. He then discusses that Players Club is allowed this ability, and to compete on an even playing field, so should The Grille.

After Chapman completes his statements, Attorney Kurtz discussed the fact that Players Club was given this permission many years ago based on a settlement agreement. Vice-Mayor Cotes advised that regardless, all businesses should be treated the same, and wanted to give The Grille the 4COP license okay, with an annual 51% to 19% food to liquor annual requirement like Players Club. After limited discussion, the motion as follows is then presented by Respondent, and passes 3-2:

- The application of Conditional Use as a “cocktail lounge” is denied (use of a 4COP license instead of a 4COP-SRX license by the restaurant);
- The application for extended hours is approved as; Monday-Thursday until 11:30 PM, Friday – Sunday until 1:00 AM, outside service stops at 11:00 PM each night

- **Analysis**

Respondent is an elected member of the Village of Wellington Council, and thus is within the jurisdiction of the Code of Ethics. During June-August 2012, Respondent received a gift of temporary housing valued at \$2,948 from a close friend, Neil Hirsch. Hirsch has a direct ownership interest in the Players Club restaurant, which according to Complainant is a direct competitor of Complainant’s restaurant, The Grille. Respondent was given a staff report concerning The Grille’s application for Conditional Use, which was to be voted on at a public hearing scheduled for and held at the Village Council meeting on August 28, 2012. This meeting was within two (2) weeks of Respondent leaving this temporary housing provided by Hirsch, on or about August 15, 2012. At this meeting, Respondent disclosed that he had an ex parte communication about this issue with Hirsch prior to the meeting. After the August 28th vote on the issue, Respondent requested that the matter be placed back on the agenda because the staff’s written Resolution did not comport with the intent of his motion as stated at the initial Council meeting on August 28th. Complainant states this was an attempt to undo the liquor license permission given The Grille at the first vote. Complainant further alleges that this action was based on an improper motive to assist Hirsch’s restaurant by lessening The Grille’s ability to compete.

- **Relevant code provisions**

The following portions of the PBC Commission on Ethics ordinance are relevant to this Inquiry:

Section 2-254. Creation and jurisdiction.

The Palm Beach County Commission on Ethics (hereinafter "commission on ethics") is hereby established. The jurisdiction of the commission on ethics shall extend to *any person required to comply with the countywide code of ethics*, the county lobbyist registration ordinance, and the county post-employment ordinance... (Emphasis added)

Section 2-442. Definitions.

Official or employee means *any official or employee of the county or the municipalities located within the county*, whether paid or unpaid. (Emphasis added)

As a Councilman for the Village of Wellington, Respondent is subject to the provisions of the PBC Code of Ethics (the Code), as of June 1, 2011, when the Village of Wellington came under the jurisdiction of the PBC Commission on Ethics.

The following sections of the Code of Ethics are relevant to this inquiry.

Section 2-443. Prohibited Conduct.

Section 2-443(a), *Misuse of public office or employment*, states in relevant portion:

An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, for any of the following persons or entities

- (1) Himself or herself;
- (2) His or her spouse or domestic partner, household member or persons claimed as dependents on the official or employee's latest individual federal income tax return, or the employer or business of any of these people;
- (3) A sibling or step-sibling, child or step-child, parent or step-parent, niece or nephew, uncle or aunt, or grandparent or grandchild of either himself or herself, or of his or her spouse or domestic partner, or the employer or business of any of these people;
- (4) An outside employer or business of his or hers, or of his or her spouse or domestic partner, or someone who is known to such official or employee to work for such outside employer or business;
- (5) A customer or client of the official or employee's outside employer or business;
- (6) A substantial debtor or creditor of his or hers, or of his or her spouse or domestic partner-- "substantial" for these purposes shall mean at least ten thousand dollars (\$10,000.00) and shall not include forms of indebtedness, such as a mortgage and note, or a loan between the official or employee and a financial institution;
- (7) A civic group, union, social, charitable, or religious organization, or other not for profit organization of which he or she (or his or her spouse or domestic partner) is an officer or director.

There is no allegation made, or evidence uncovered during the initial inquiry that would show that respondent participated in discussions, and voted on The Grille's Application for Conditional Use, on either August 28, 2012, or September 11, 2012, to give an improper benefit to any person or entity that falls within §2-443(a)(1-7) of the Code of Ethics. The identified entities and persons in this section do not include personal friends.

Section 2-443(c), *Disclosure of voting conflicts*, states:

County and municipal officials as applicable shall abstain from voting and not participate in any matter that will result in a special financial benefit *as set forth in subsections (a)(1) through (7) above*. The official shall publicly disclose the nature of the conflict and when abstaining from the vote, shall complete and file a State of Florida Commission on Ethics Conflict Form 8B pursuant to the requirements of Florida Statutes, §112.3143. Simultaneously with filing Form 8B, the official shall submit a copy of the completed form to the county commission on ethics. Officials who abstain and disclose a voting conflict as set forth herein, shall not be in violation of subsection (a), provided the official does not otherwise use his or her office to take or fail to take any action, or influence others to take or fail to take any action, in any other manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, as set forth in subsections (a)(1) through (7). (Emphasis added)

Since there is no evidence of any special financial benefit was given to any person or entity within §2-443(a)(1-7) above, this section of the Code is not applicable to these facts.

Section 2-443(b) *Corrupt misuse of official position*, states:

An official or employee shall not use his or her official position or office, or any property or resource which may be within his or her trust, to corruptly secure or attempt to secure a special privilege, benefit, or exemption for himself, herself, or others. For the purposes of this subsection, "*corruptly*" means *done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit*

resulting from some act or omission of an official or employee which is inconsistent with the proper performance of his or her public duties. (Emphasis added)

Section 2-444(e) No person or entity shall offer, give, or agree to give an official or employee a gift, and no official or employee shall accept or agree to accept a gift from a person or entity, because of:


- (1) An official public action taken or to be taken, or which could be taken;
- (2) A legal duty performed or to be performed or which could be performed; or
- (3) A legal duty violated or to be violated, or which could be violated by any official or employee.

While the gift of temporary residence was given on and before August 15, 2012, the closeness in time between the gift and the alleged conflict is relevant. Complainant has personal knowledge that this gift was given by his competitor who purportedly had an interest in Respondent's application being denied by the Village Council. In an advisory opinion requested by the Village Attorney and involving this specific gift, the COE opined that while there may not be a violation of the code when voting on matters that may affect Mr. Hirsh's interests going forward, "(W)ether or not a corrupt misuse has occurred will be based upon the facts and circumstances presented."⁵ In light of the fact that Respondent disclosed an ex-parte meeting with Mr. Hirsh, along with the subsequent participation and vote on an issue potentially affecting Mr. Hirsh's financial interest both occurred within 2 weeks of the gift, a preliminary investigation into this matter may be warranted.

Legal sufficiency exists where there is an allegation of a violation of an ordinance within the jurisdiction of the Ethics Commission, purportedly committed by an individual within the authority of the Ethics Commission, based substantially on the personal knowledge of the Complainant filed in a sworn complaint, relating to an alleged violation occurring after the effective date of the code, and filed with the Ethics Commission within two years of the alleged violation.

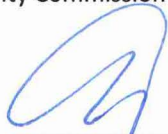
End of initial inquiry.

Submitted by:


Mark E. Bannon, Investigator
PB County Commission on Ethics

10/26/2012
Date

Reviewed by:


(Initials)

10/26/2012
Date

⁵ RQO 12-065

PALM BEACH COUNTY COMMISSION ON ETHICS
MEMORANDUM OF LEGAL SUFFICIENCY

To: Palm Beach County Commission on Ethics
From: Alan S. Johnson, Executive Director
Re: C12-012 – John J. Greene, Village of Wellington Councilman

- **Recommendation**

Regarding Respondent, John J. Greene, Village of Wellington Councilman, staff recommends a finding of **LEGAL SUFFICIENCY** be entered in Complaint C12-012.

Legal sufficiency exists where there is an allegation of a violation of an ordinance within the jurisdiction of the Ethics Commission, purportedly committed by an individual within the authority of the Ethics Commission, based substantially on the personal knowledge of the complainant, relating to an alleged violation occurring after the effective date of the code, and filed with the Ethics Commission within two years of the alleged violation.

- **Background**

This Inquiry is based on a sworn Complaint against Village of Wellington (the Village) Councilman John J. Greene, and filed with the PBC Commission on Ethics (COE) by Juan Gando, a resident of Wellington, and part owner of two (2) restaurants located within Wellington.

The basis of this complaint is that Respondent participated in discussions, and voted on two (2) separate occasions at Wellington Council Meetings, involving a Conditional Use Application filed with Wellington by “The Grille.” The Complaint alleges that Respondent’s participation and votes on these occasions were in violation of the Code of Ethics, based on the “personal bias, agenda and nepotism of Mr. Greene.” By way of providing background information, the Complainant alleges that “Players Club,” which is owned and operated by Neil Hirsch, is a direct competitor of both The Grille and Oli’s Fashion Cuisine. The Complainant was aware of the personal friendship between the Respondent and Mr. Hirsh and that Respondent previously abstained from voting and participating in other matters involving Mr. Hirsh’s interests.

The relationship of Respondent to Neil Hirsch had been previously addressed by the COE in an unrelated sworn complaint¹ and two (2) separate relevant Requests for Advisory Opinion, RQO 12-065² and RQO 12-045³.

Both the opinions and Complaint C12-003 involved Respondent’s relationship to Neil Hirsch. The Complainant in C12-003 alleged that Hirsch had financially assisted Respondent Greene’s election to the Wellington Council. RQO 12-065 specifically addressed Respondent’s acceptance of a gift of temporary housing from Hirsch between June 9, 2012 and August 15, 2012, valued at \$2,948. At the time he was living in housing provided by Hirsch, Respondent had two (2) matters come before the Village Council concerning Hirsch’s business interests. Respondent abstained from participation and did not vote.

¹ C12-003

² RQO 12-065, rendered by the COE on October 4, 2012, advised that unless an official uses his or her office to corruptly secure a special financial benefit for another, there is no prohibition against voting or participating in matters involving a friend, where there is not a financial, fiduciary or familial relationship between the parties as provided in Art. XIII, §2-443(a)(1-7).

³ RQO 12-045, rendered by the COE on June 7, 2012, advised that a gift of housing from a personal friend valued at more than \$100 annually in the aggregate is prohibited where the friend is a director of a civic organization, and that organization is a principal or employer of a lobbyist, but, not if the giver is not a vendor, lobbyist, principal or employer of a lobbyist, or unless given for some improper purpose.

At least partially due to these abstentions, the COE opined in RQO 12-065, "Based upon the facts and circumstances presented, there is no indication that Councilman Greene accepted a gift from Mr. Hirsch in exchange for a future vote, official action or legal duty performed." However, this opinion was rendered prior to the Respondent's participation and vote on the instant matters. The events before the Village Council that form the subject matter of this Complaint took place on August 28, 2012 and September 11, 2012. Both a disclosed ex parte communication with Mr. Hirsh and first relevant Council meeting occurred within 2 weeks of the temporary residence gift which ended on August 15.

- **Analysis**

As a Councilman for the Village of Wellington, Respondent is subject to the provisions of the PBC Code of Ethics (the Code), as of June 1, 2011, when the Village of Wellington came under the jurisdiction of the PBC Commission on Ethics.

The following sections of the Code of Ethics are relevant to this inquiry.

Section 2-443. Prohibited Conduct.

Section 2-443(a), *Misuse of public office or employment*, states in relevant portion:

An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, for any of the following persons or entities

- (1) Himself or herself;
- (2) His or her spouse or domestic partner, household member or persons claimed as dependents on the official or employee's latest individual federal income tax return, or the employer or business of any of these people;
- (3) A sibling or step-sibling, child or step-child, parent or step-parent, niece or nephew, uncle or aunt, or grandparent or grandchild of either himself or herself, or of his or her spouse or domestic partner, or the employer or business of any of these people;
- (4) An outside employer or business of his or hers, or of his or her spouse or domestic partner, or someone who is known to such official or employee to work for such outside employer or business;
- (5) A customer or client of the official or employee's outside employer or business;
- (6) A substantial debtor or creditor of his or hers, or of his or her spouse or domestic partner-- "substantial" for these purposes shall mean at least ten thousand dollars (\$10,000.00) and shall not include forms of indebtedness, such as a mortgage and note, or a loan between the official or employee and a financial institution;
- (7) A civic group, union, social, charitable, or religious organization, or other not for profit organization of which he or she (or his or her spouse or domestic partner) is an officer or director.

There is no allegation made, or evidence uncovered during the initial inquiry that would show that Respondent participated in discussions, and voted on The Grille's Application for Conditional Use, on either August 28, 2012, or September 11, 2012, to give an special financial benefit to any person or entity that falls within §2-443(a)(1-7) of the Code of Ethics. The identified entities and persons in this section do not include non-relative personal friends. Additionally, there is no evidence obtained, or information submitted within the personal knowledge of the Complainant, that Respondent has a business relationship with Mr. Hirsh.

Section 2-443(c), *Disclosure of voting conflicts*, prohibits a municipal official from voting and participating in any matter that will result in a special financial benefit *as set forth in subsections (a)(1) through (7)* of the misuse of public office section. The official is required to publicly disclose the nature of the conflict and when abstaining from the vote, complete and file a State of Florida Commission on Ethics Conflict Form 8B pursuant to the requirements of Florida Statutes, §112.3143.

Since there is no evidence that a special financial benefit was given to any person or entity within §2-443(a)(1-7) above, this section of the Code is not applicable to these facts.

Section 2-443(b) *Corrupt misuse of official position*, states:

An official or employee shall not use his or her official position or office, or any property or resource which may be within his or her trust, to corruptly secure or attempt to secure a special privilege, benefit, or exemption for himself, herself, or others. For the purposes of this subsection, "*corruptly*" means *done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of an official or employee which is inconsistent with the proper performance of his or her public duties.* (Emphasis added)

Section 2-444(e), states:

No person or entity shall offer, give, or agree to give an official or employee a gift, and no official or employee shall accept or agree to accept a gift from a person or entity, because of:

- (1) An official public action taken or to be taken, or which could be taken;
- (2) A legal duty performed or to be performed or which could be performed; or
- (3) A legal duty violated or to be violated, or which could be violated by any official or employee.

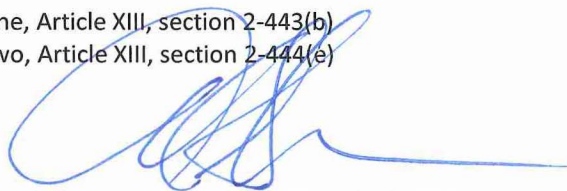
While the gift of temporary residence was given on and before August 15, 2012, the closeness in time between the gift and the alleged conflict of interest is relevant. Complainant has personal knowledge that this gift of temporary residence was given by his competitor who purportedly had an interest in Respondent's application being denied by the Village Council. In an advisory opinion requested by the Village Attorney and involving this specific gift, the COE opined that, after the gift had been given, while there may not be a violation of the code when voting on matters that may affect Mr. Hirsh's interests going forward, "(W)ether or not a corrupt misuse has occurred will be based upon the facts and circumstances presented."⁴ In light of the fact that Respondent disclosed an ex-parte meeting with Mr. Hirsh, and subsequently participated and voted on an issue potentially affecting Mr. Hirsh's financial interest, all within 2 weeks of the gift, a preliminary investigation into this matter is warranted.

• **Conclusion**

Based on the fact that the allegations provided in the Complaint are within the jurisdiction of the COE and are sufficiently based upon the personal knowledge of the Complainant, the Complaints filed in C12-012 against Respondent, John J. Greene, are **LEGALLY SUFFICIENT**.

Count One, Article XIII, section 2-443(b)
Count Two, Article XIII, section 2-444(e)

BY:



Alan S. Johnson, Executive Director
Florida bar #223352
Commission on Ethics

10/25/2012
Date

⁴ RQO 12-065

MEMORANDUM OF INVESTIGATION

To: Alan S. Johnson, Executive Director
From: Mark E. Bannon, Investigator
Re: C12-012 – John J. Greene, Councilman, Village of Wellington

All information from the initial Memorandum of Inquiry is incorporated by reference into this Memorandum of Investigation.

- **Investigation**

After reviewing video of the Wellington Planning, Zoning and Adjustment Board (PZAB) meeting on July 11, 2012, as well as the Village Council meetings on August 28, 2012 and September 11, 2012, I made contact with Respondent. He agreed to meet with me at the COE office for an interview concerning this matter on Tuesday, October 16, 2012 at approximately 2:00p.m.

- **Persons interviewed during Initial Inquiry and Subsequent Investigation**

1. Respondent, John Greene
2. Neil Hirsch, owner of Players Club restaurant
3. Robert Basehart, Wellington Growth Management Director
4. Avary Chapman, Attorney for The Grille Restaurant and owners, Juan Gando & Dustin Parfitt
5. Jeffery Kurtz, Wellington Village Attorney

- **Interview with John J. Greene, Councilman, Village of Wellington**

The interview with Respondent John Greene was conducted in the COE office conference room on Tuesday, October 16, 2012. This interview was recorded, and conducted under oath. The interview began at 2:09p.m., and was completed at 2:46p.m. Prior to beginning the interview, I gave Respondent a copy of the Complaint and some time to review it. Respondent had also mentioned to me that he had spoken to a lawyer the day before regarding this interview. However, when asked, Respondent advised that he did wish to give me a statement at this time, had not retained an attorney, and was not otherwise represented by legal counsel for this matter, and that he did not wish to have legal representation present as he spoke to me.

Respondent was asked to identify himself and that he was a Councilperson for the Village of Wellington. He also acknowledged that he understood he was under oath. I began to discuss the issues contained within the Complaint, and how it was that the Application for Conditional Use submitted by Complainant Juan Gando was taken before the Village Council for a vote twice. We had some discussion as to the meaning of the 4COP-SRX liquor license as opposed to the 4COP liquor license, and the 51% - 49% food to liquor sales required by the 4COP-SRX license. I discussed with Respondent the two (2) different issues involved in this application (extended hours and change in liquor license), and Respondent advised that the motion he made concerning this application probably should have been listed as two (2) separate items on the agenda and addressed in two (2) separate motions, because the Applicant was asking for two (2) separate forms of relief in the application. However, they were presented as one (1) item. We then briefly discussed the issue brought out by Robert Basehart (Wellington Growth Management Director who made the staff presentation before Village Council at the August 28th meeting) regarding an earlier staff recommendation before the PZAB on July 11th that this application be denied. However, the recommendation from PZAB to Council was unanimous (6-0) to approve the application, with additional conditions, including the 51% food to 49% liquor requirement on only an annual basis, which would require the use of the 4COP license.

Respondent stated that when he made the motion at the Council meeting on August 28th, he believed he was only addressing the issue of extended hours. However, when he added the staff recommendation of an audit by the Village, he did not realize that staff, and possibly some Council Persons, believed the audit language indicated a change in liquor license from a 4COP-SRX to a 4COP license, which he states was not his intent. Within a day or so of the meeting Respondent read the resolution staff had drafted to cover what was voted on, and realized that staff had misunderstood the intent of his motion. He states that he never intended to give the Applicant permission to have a 4COP license at a restaurant when it would violate the zoning code due to it being too close to residential areas. At this point, Respondent states he contacted Village Attorney Jeff Kurtz, who advised that the remedy was to put the item back onto the agenda for the next meeting to clarify the motion so that everyone understood what was being offered, and then conduct a new vote.

At this point, I addressed Respondent's relationship with Hirsch and his outside employment, as the Complaint had alleged Respondent might be employed by Neil Hirsch. Respondent stated that he was not employed by Hirsch or any business Hirsch owned or controlled, and (in relation to another issue alleged in the Complaint), stated he was also not listed in any Hirsch Trust, and was not aware if one existed. Respondent stated that he was currently unemployed, but was working to obtain his real estate license. He described Hirsch as a friend that he had known for nearly thirty (30) years, although they had become much closer in the ten (10) years since Respondent had moved to Wellington. When advised that in the first Council meeting on August 28th, he had disclosed ex parte communications with a representative of the Players Club Restaurant about this matter, Respondent confirmed that this communication was a discussion with Neil Hirsch. Respondent was not sure whether this conversation was in person or over the telephone (he stated that they talk frequently as friends), but he believes it may have been over the telephone because Hirsch may have still been in New York at that time.

Respondent stated that he spoke to Hirsch partially to discuss the Players Club, and how it had come to be that they operated under extended hours and with a 4COP liquor license. He was informed that this was the result of a settlement agreement with the Village several years ago. Hirsch told Respondent that a number of years ago he approached the then Village Manager, asking if he could purchase a 4COP liquor license and was told yes. However, after doing so, Hirsch was later told that the Village Manager did not have the authority to grant him the right to operate under a 4COP license, because the Players Club was too close to residential properties, so he would need Council approval. Eventually, the issue was ended by this settlement agreement, allowing the 4COP license for the Players Club, under the condition that Players Club must follow an annual requirement of 51% to 49% alcohol to food sales, and the Village can audit the Players Club to ensure they are following these guidelines. When I asked Respondent what the other part of the discussion was, he stated that they talked a lot about code enforcement and how restaurants operate when dealing with code enforcement issues, and Hirsch's attempts to comply with the rules under code enforcement. They also discussed that the restaurant that previously occupied the space where The Grille is now located (Nichole's) had several code violations that were never really addressed, and Hirsch said he tries to follow the code at Players Club.

I then asked Respondent directly whether he asked Hirsch for his advice or opinion as to how he should vote on The Grille's Application for Conditional Use. Respondent stated that he did not. He was simply trying to obtain some historical perspective as to how Players Club got its exemptions. I then asked him if at any time during the conversation Hirsch offered an opinion concerning whether the Application for Conditional Use by The Grille should be granted or denied. Again, Respondent stated Hirsch did not offer any view about whether the application should be approved. He also said that conversations he has had with Hirsch about the various state liquor licenses (4COP, 4COP-SRX, and what they are), came after the votes were already taken, and that he was not aware that Gando had purchased a 4COP license prior to taking this matter before the Council until the Grille representative, Avery Chapman stated it at the August 28th meeting. Respondent stated that he voted not to allow a 4COP license because he did not believe that because of the location, close proximity to the residential areas, and the past history of violations at that location, it was a good idea to grant an unrestricted liquor license.

During this interview, I asked Respondent why he had not spoken to the Applicant about this issue as several other Council members spoke with the Applicant. Respondent stated he did not have time that day, and the Applicant

never contacted him to ask to meet. When asked if that was normal protocol, that the Applicant will contact the Council member for an appointment, and that Council members generally do not make the first contact, he replied, "Yes." Respondent stated that the Council members make themselves available to anyone who has an item that will come before Council, but he was not asked to speak with this Applicant. However, he stated he did remember that before the first or second meeting, Juan Gando and Attorney Chapman did meet with Mayor Margolis and possibly some Village staff. He was asked at that time if he could meet with them, but he had other appointments and commitments that day and declined, advising that they be told to call and schedule an appointment to meet with him. The Applicant never contacted him to ask to meet after that point.

We then discussed what Respondent was trying to achieve with his motion at the first meeting. Respondent said that there was a lot of discussion about extended hours, and issues brought out by the PZAB pertaining to outside service and limiting noise after 11:00p.m. He stated that he was trying to give some leniency to the Applicant by granting some of their requests, but he never intended to allow them to use a 4COP license in that location. Respondent stated that he believed whatever requirements The Grille had to comply with under state law would remain, but since Players Club had an annual 51%-49% food to liquor ratio audit provision in their agreement, he thought it made sense to add this for the extended hours. Since that time, he learned that if the state requirement exists (as it does in a 4COP-SRX license), there is no need for the Village to monitor this. Respondent reiterated that there was much confusion in the discussions and these should have been separate items on the agenda. He brought the matter back to the Council because in reading staff's proposed resolution, it did not accurately reflect his motion.

I then explored any relationship Respondent might have with Hirsch beyond mere friendship. Respondent stated that he has no financial or business interests in line with Hirsch, is not employed by any company in which Hirsch has any control or ownership interest, and owns no property with Hirsch. He also stated that, as far as he knows, he is not named in any Trust owned or controlled by Hirsch. They have no financial or business relationship outside of their friendship. Respondent reiterated that at no time did he ask Hirsch for an opinion as to how he should vote on the Application for Conditional Use by The Grille scheduled to come before the Council, and at no time did Hirsch offer any opinion as to this matter.

End of interview.

On Monday, October 22, 2012, I made contact by telephone with Neil Hirsch, and arranged to interview him at his home, 12076 Polo Club Drive, Wellington, on Tuesday October 23, 2012 at 9:00 a.m..

- **Interview with Neil S. Hirsch, Owner, Players Club Restaurant**

I conducted an interview with Neil Hirsch at his home. This interview was recorded, and taken under oath. The interview began at 9:12a.m., and was completed at 9:28a.m.

During the interview, Neil Hirsch did agree that Players Club was his restaurant, which he described as more of a hobby than a business interest. In reference to his relationship with Respondent, Hirsch advised that he has known respondent for 25-30 years, and that Respondent attended college with Hirsch's nephew. However, they did not become close personal friends until about ten (10) years ago, when Respondent relocated to Wellington. He described his current relationship with Respondent only as a personal friend, and advised that Respondent is not employed by him, and has never been employed by Hirsch, or any business owned or controlled by Hirsch.

We discussed the temporary living space that Hirsch had provided to Respondent from June to August of this year. Hirsch stated that he did allow Respondent to stay in his guesthouse during this period because he needed a temporary place to stay. Hirsch was in New York during most if not all of this period. Hirsch stated that this housing was offered only to Respondent as a friend, and they never discussed, nor did Hirsch expect, any quid pro quo or special favor from Respondent related to this gift, including any special consideration by Respondent as a Wellington Councilman.

I asked Hirsch if he remembered a conversation between Respondent and himself, possible occurring sometime in early or mid August, in which respondent discussed The Grille's Application for Conditional Use. Hirsch stated he did not remember when the conversation took place, but did remember that Respondent at one point asked him about the liquor license Players Club operates under (4COP), and was interested in how the permission to use this license was established for Players Club. Hirsch then went on to describe that while Players Club does operate with a "cocktail lounge" state license, per an agreement with the Village, it must conform to the 51% - 49% food to liquor ratio that a standard 4COP-SRX license requires, but on an annual basis. Hirsch stated that this settlement was based on his being given permission by the Village Manager several years ago to buy a 4COP license. After spending \$100,000 on the license he was told by Village staff that the Manager could not give this permission and it must come from the Village Council. This was fleshed out during his appeal of some code enforcement violations the Players Club had been accused of, and as a result of those action, a settlement agreement was entered into. The settlement was entered into years before Respondent's election to the Village Council.

When asked directly if he had offered respondent his opinion, or asked him to vote in any particular way on The Grille's Application for Conditional Use, Hirsch said he did not. He also stated that Respondent never asked him his opinion, but was interested in understanding why Players Club had a 4COP license in an area close to residential property when the Village Code prohibited this, and that was the extent of their discussion.

End of interview.

After speaking with Hirsch, I made arrangements to meet with Wellington Growth Management Director Robert Basehart at his office in the Village Hall. My purpose in meeting with Basehart was to find out his perspective of the motion offered by Respondent at the August 28th Council meeting as well as to discuss how the motion came to be placed back on the agenda. Basehart stated that generally, Planning and Zoning Manager David Flinchum would make staff presentations to both the PZAB, and the Village Council on conditional use matters. However, Flinchum was out of town during the PZAB meeting, and since Basehart made that presentation, he also made the presentation to Village Council.

Staff's initial recommendation to PZAB at the July 11th meeting was to deny the conditional use application from The Grille based on the fact that it violates the zoning code in the Wellington PUD where The Grille is located. Since the location was within 250 feet of residential property, the Code would not allow a "cocktail lounge" to be located there, and the 4COP license allows the owner to operate as a cocktail lounge. After his presentation at the August 28th meeting, it was staff's belief that Respondent's motion meant they had approved not only some extended hours, but also the use of the 4COP license by the Applicant, based on Respondent's reference to the Village's ability to audit the food to liquor percentages be added into the motion. Under a 4COP-SRX license, the state audits this ration, and so the Village would have no reason or need to audit. However, it was Basehart's understanding that when Respondent read the proposed resolution from staff, it did not reflect what he believed he stated in the motion. Basehart said he believed that Respondent spoke first with Village Attorney Kurtz, then sent an email to the Mayor asking that the matter be brought back before Council because the resolution was different than his intended motion.

Basehart advised that he has only been with the Village for three (3) years, however he has worked in local government for nearly forty (40) years, and he has seen matters brought back before legislative bodies based on a misunderstanding of a motion as it was translated into written form by staff. He said it does not happen often, but it does happen occasionally with complex motions such as this one. While at the Village Hall, I attempted to speak briefly with Village attorney Jeff Kurtz, but was advised that he was out of town on personal business, and would not return until Monday, October 29, 2012.

On October 25, 2012, I contacted Attorney Avery Chapman by telephone. Chapman is the legal representative for Juan Gando in this matter. I asked Chapman specifically if the reason he believed that Respondent should have abstained from the Conditional Use issues on August 28th and September 11th was based solely on his previous abstention in two (2) matters before the Village Council concerning Neil Hirsch. Chapman stated that the prior abstentions were what made him aware that Respondent's relationship to Hirsch, and thus to his business

interests, were based on more than friendship alone. Chapman stated that he and his client were aware Respondent stayed in Hirsch's guest house for some period of time and was also aware that Respondent was not employed, based on the financial disclosures he filed with the State of Florida as an elected official. He pointed to this information as leading to a conclusion that Respondent must be working for, or supported by, Neil Hirsch. When I asked him if he had specific information based on his or his client's personal knowledge that there was some business or financial relationship between Respondent and Hirsch, he admitted he did not, but felt the COE had an obligation to investigate this possibility. We spoke briefly about the settlement agreement between the Village and Players Club, and he advised that this agreement did not address the hours of operation, merely the 4COP license. After some further discussion, I asked Chapman to forward a copy of the settlement agreement and any financial disclosures of Respondent he felt were relevant to me.

On October 25, 2012, I spoke with Kurtz regarding the meeting on August 28th and the long discussions that preceded the vote on the Conditional Use Application from The Grille. Kurtz said that he was in the process of editing the staff resolution of the issue early on August 29th, when he was advised separately by the Respondent and Village Manager, Paul Schofield, (he is not sure who approached him first), that the motion as passed may not have been accurately reflected in the staff resolution. Specifically, each of them felt it was unclear as to the question of whether or not Council had agreed to allow the Applicant to operate under a 4COP license. After discussing the matter with Schofield, Kurtz obtained a transcript and listened to an audio recording of the motion portion of the meeting. He advised that his purpose was to determine if it appeared that the motion as offered by Respondent was ambiguous or if it was clearly stated. Kurtz advised that he believed there was enough ambiguity to indicate the motion was unclear because of the discussion of the Village's right to "audit" the 51% to 49% food to liquor ratio and other information discussed on the recording. In such a case, which Kurtz stated happens occasionally with "speaking motions", the matter is brought back before the legislative body to be clarified. Kurtz further stated that if he had not found ambiguity in the motion, he would have looked at the issue in light of whether or not Respondent could then ask for a reconsideration of the motion. However, Respondent's mere belief that the motion did not reflect his intent would not be enough to have the motion brought back for clarification. In Kurtz' opinion, the motion made on August 28th was sufficiently ambiguous to require it to be clarified by the Council. The transcript that Kurtz used from the August 28th Council meeting can be found in the August 28th Agenda and Item Summary submitted to file.

Finally, it should be noted that on October 2, 2012, Village Attorney Kurtz asked for an informal advisory opinion from the Florida Commission on Ethics (FCOE) concerning the prior gift of housing to Respondent by Neil Hirsch, and his obligations under Florida law as to any future voting conflicts that this gift may create for Respondent when dealing with issues which Hirsch has some interest. This opinion is submitted to file; however, FCOE General Counsel C. Christopher Anderson III stated the following in this letter:

"It is difficult to opine on the applicability of the statute in the context of things past, given the evidential nuances of fact which can bear on a particular situation; thus, no view is given herein. However, in the instant matter, the very long and good friendship represented between Mr. Hirsch and the Councilmember seemingly would weigh against a view that the guest house lodging was given with the intent to influence the Councilmember's vote or decision making regarding issues of interest to Mr. Hirsch. Nevertheless, as mentioned above, this past receipt of lodging does not create a voting conflict for the Councilmember under 112.3143(3)(a).

Because this letter was written after the second vote by Respondent, it has no direct bearing on those votes. However, it does offer the perspective of the FCOE on how the relationship and gift between Respondent and Neil Hirsch might be viewed concerning future votes by Respondent where Hirsch's financial interests are involved.

- **List of documents submitted to file**

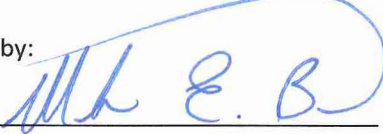
1. Original sworn Complaint dated September 27, 2012, Addendum dated September 26, 2012, and letter to Wellington Mayor Bob Margolis from attorney Avery S. Chapman dated September 11, 2012. (5 pages)

2. Copy of Wellington Village Council Agenda and Item Summary (7A) package given to each Council Person for the meeting of August 28, 2012. (52 pages)
3. Copy of Wellington Village Council Agenda and Item Summary (8C) package given to each Council Person for the meeting of September 11, 2012. (48 pages)
4. Copy of list of various state liquor licenses and requirements from the Florida Division of Alcoholic Beverages , Bureau of Licensing website (7 pages)
5. Copy of §561.20, Florida Statutes (2012), regarding state liquor licenses. (8 pages)
6. Copy of PBC Commission on Ethics Advisory Opinions RQO 12-045 (3 pages) and RQO 12-065 (4 pages).
7. Copy of biographical information about the Wellington Village Council and Respondent from the Village of Wellington website (www.ci.wellington.fl.us) (5 pages)
8. Copy of corporate information from the Florida Division of Corporations website (www.sunbiz.org), regarding Players Club Restaurant, Sperin, Inc., Juanito's Restaurant, LLC (The Grille), and Oli's Restaurant Group, LLC. (7 pages)
9. Copy of informal Advisory Opinion dated October 2, 2012, from C. Christopher Anderson III, General Counsel and Deputy Director, Florida Commission on Ethics Re: Village of Wellington Councilmember John Greene. (3 pages)

- **Relevant code provisions**

The relevant code provisions section from the initial Memorandum of Inquiry, are specifically incorporated by reference into this Memorandum of Investigation.

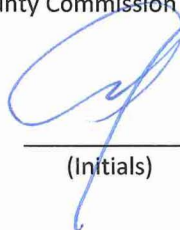
Submitted by:



Mark E. Bannon, Investigator
PB County Commission on Ethics

10/26/2012
Date

Reviewed by:


(Initials)

10/26/2012
Date

PALM BEACH COUNTY COMMISSION ON ETHICS

MEMORANDUM OF NO PROBABLE CAUSE

To: Commission on Ethics
From: Megan C. Rogers, Staff Counsel
Re: Case Number C12-012 – John J. Greene, Village of Wellington Councilman

- **Recommendation**

A finding of NO PROBABLE CAUSE and DISMISSAL should be entered in the above captioned matter as to the allegations made in the Complaint.

Probable Cause exists where there are reasonably trustworthy facts and circumstances for the Commission on Ethics (COE) to believe that the Respondent, John J. Greene, violated the Palm Beach County Code of Ethics.

- **Jurisdiction**

The COE has jurisdiction pursuant to Chapter 2, Article V, Division 8, §2-258(a) of the Palm Beach County Commission on Ethics Ordinance which states in pertinent part:

Article V, Division 8, Section 2-258. *Powers and duties.* (a) The commission on ethics shall be authorized to exercise such powers and shall be required to perform such duties as are hereinafter provided. The commission on ethics shall be empowered to review, interpret, render advisory opinions and enforce the;

- (1) County Code of Ethics;
- (2) County Post-Employment Ordinance, and
- (3) County Lobbyist Registration Ordinance.

Article XIII, §2-443(b) *Corrupt misuse of official position*, of the Palm Beach County Code of Ethics (the Code) prohibits any employee or official from corruptly using their position to give a benefit to themselves or another.

Article XIII, §2-444(e), prohibits an official from accepting a gift because of the performance of a legal duty or official action.

This memorandum adopts by reference the Memorandum of Inquiry and Investigation prepared by COE investigative staff. In addition, staff adopts by reference facts and circumstances established in C12-003 and RQOs 12-045 and 12-065.

- **Background**

This Inquiry is based on a sworn Complaint against Village of Wellington (the Village) Councilman John J. Greene, and filed with the PBC Commission on Ethics (COE) by Juan Gando, a resident of Wellington, and part owner of two (2) restaurants located within Wellington. The Complaint alleges that on two occasions the Respondent participated and voted on issues financially benefiting a personal friend, Neil Hirsh. Mr. Hirsh owns a competing restaurant. Mr. Hirsh's establishment had been given extended hours and a less restrictive liquor license pursuant to a settlement agreement with the Village in 2003. Complainant alleged that it financially benefitted Mr. Hirsh to not allow other establishments, including the Complainant's, from obtaining these same benefits. The allegations specific to Respondent included the fact that Respondent had previously been living in the guest house at the residence of Mr. Hirsh and met with him ex-parte regarding these issues. For purposes of background, staff has

previously obtained information pertaining to an ongoing gift of temporary residence extended to Respondent by Mr. Hirsh. This gift was ongoing between June 9, 2012 and August 15, 2012 with a calculated value of \$2,948.

Within 2 weeks of receiving the last segment of this gift, Respondent met ex-parte with Mr. Hirsh and participated and voted on the use application issues before the Village Council. Subsequently, on September 11, 2012, the issue was brought back to the Village Council at the request of Respondent due to confusion over the initial vote. At that time, the issue was discussed and voted on anew and Complainant's application(s) were adopted in part and denied in part. Due to the closeness in time of the gift and the quasi-judicial hearing on the applications, as well as the ex-parte communication, staff determined that legal sufficiency existed to investigate further.

- **Inquiry**

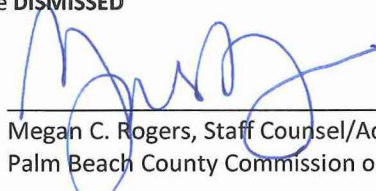
Inquiry and Investigation into this matter revealed that the initial resolutions passed on August 28 may have been misunderstood by Village staff and several of the Village Council members. Village staff concurred that the matter was correctly resubmitted for clarification. Once re-submitted, the matter was open for reconsideration. Respondent did in fact accept an ongoing gift of residence that terminated on August 15, 2012. At the August 28, 2012 meeting, Respondent declared that he met ex-parte with Mr. Hirsh who arguably had a financial interest in the Village Council denying the applications of Complainant's restaurants. Notwithstanding, the investigation into this matter did not reveal any trustworthy facts and circumstances to support a finding of probable cause to proceed.

At the time of the alleged violations, the gift to Respondent was no longer ongoing. The testimony of Village staff and an in-depth review of the relevant taped proceedings of August 28th and September 11th support a finding that the initial resolution was unclear as to what decisions were actually adopted by Council on August 28th and staff supported the request to return the issue to Council for clarification. In addition, testimony of Mr. Hirsh, Respondent, Village Growth Management Director Bob Basehart and Attorney Jeff Kurtz, along with the facts and circumstances surrounding the issues, fail to establish a finding of a quid pro quo in exchange for the prior gift to Respondent. While the relative closeness in time between the gift, meeting and official acts of Respondent may have given rise to further scrutiny, no other facts or circumstances support a finding of violation. Both Mr. Hirsh and Respondent stated under oath that the purpose of the communication was solely to obtain background information as to how Mr. Hirsh's establishment was able to get these licenses in 2003. Staff concurred with the need for clarification and the subsequent meeting videotape supports such a finding. There was no longer an ongoing gift being given to the Respondent, and no documentary or testimonial evidence indicated a quid pro quo in exchange for Respondent's vote.

- **Conclusion**

Based on the facts and circumstances, there is **NO PROBABLE CAUSE** to believe that Respondent, John J. Greene, has violated §2-443(b) or §2-444(e) of the Palm Beach County Code of Ethics. Therefore, staff recommends that this matter be **DISMISSED**

By:


Megan C. Rogers, Staff Counsel/Advocate
Palm Beach County Commission on Ethics


DATE