



Palm Beach County Commission on Ethics

Commissioners

Manuel Farach, Chair
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Executive Director

Steven P. Cullen

April 15, 2013

Mark Herron, Esquire
Messer Caparello
2618 Centennial Place
Tallahassee, FL 32308

Sent via email only to: mherron@lawfla.com

Re: C13-002 - John Greene, Councilman

Dear Mr. Herron,

On April 5, 2013, you were notified that a Complaint had been filed against your client, John Greene, in the above referenced matter. On April 15, 2013, the Advocate, Megan C. Rogers, issued a Memorandum of Probable Cause to the Commission on Ethics (COE) recommending probable cause be found. (see attached)

On May 2, 2013 the Complaint will be heard by the COE in executive session.

While it is recommended that your client appear, you are not required to attend the executive session/probable cause hearing. The executive session will take place at the following time and location:

May 2, 2013—4:30 p.m.
Palm Beach County Governmental Center
301 North Olive Avenue - 12th Floor McEaddy Conference Room
West Palm Beach, FL 33401

The probable cause hearing will be held in executive session and closed to the public unless you provide a written request that the hearing be held in a public forum. You have an opportunity, in accordance with the procedures as set forth in the Commission on Ethics Rules of Procedure, to file a written response to the advocate's recommendation prior to the probable cause hearing. Any documentary evidence that you wish to provide will also be considered by the COE.

Along with the COE Advocate, you will be permitted to make a brief oral statement in the nature of oral argument to the commission before a probable cause determination is made, based upon the Investigator's reports, your written response and the recommendation of the Advocate. If the COE finds no probable cause, the Complaint will be dismissed. If probable cause is found, the COE will set a final public hearing in the matter within 120 days and you will be notified of the proceedings and requirements. At any time prior to a final public hearing, a negotiated settlement may be entered into upon approval by the COE. Please feel free to contact me should you have any questions regarding procedural issues. For all other matters, please contact the Advocate, Megan Rogers, at 561-233-0727.

Sincerely,

Steven P. Cullen,
Executive Director

SPC/gal
Attachments

PALM BEACH COUNTY COMMISSION ON ETHICS

EXECUTIVE SUMMARY

To: Palm Beach County Commission on Ethics
From: Mark E. Bannon, COE Investigator
Re: C13-002 – John Greene, Council Member, Village of Wellington

This matter came to the attention of COE staff via a sworn complaint filed in January, 2013. The Complainant is Mark Bellissimo of Wellington Equestrian Partners, 14440 Pierson Rd., Wellington, FL. The Respondent listed on this complaint is John Greene, a current Council Member of the Village of Wellington (the Village). The complaint itself is a seven (7) page document including a “statement of facts” that lays out the substance of the complaint, the COE complaint form and “supplemental statement of facts” that is four (4) pages in length. Also included in this package were several documents presented as evidence of the issues raised within the statement of facts. This complaint was sworn to by Complainant and properly notarized on January 9, 2013. The second complaint form was sworn to and properly notarized on February 13, 2013.

The general allegation raised by this complaint is that Respondent received gifts prohibited by the code of ethics. Complainant alleges that Respondent received gifts from Neil Hirsch, Steven Rapaport and Victoria McCullough by way of donations made by each to Respondent’s Legal Defense Fund. Donations were made to Respondent’s legal defense fund to assist in defending his election to Village Council in the 2012 municipal elections. Under the PBC Code of Ethics, gifts to an official or employee of the county, or any municipality within the county may be prohibited under two (2) circumstances.

- Section 2-444(a)(1), *Gift law*, prohibits any official or employee of the county or a municipality from receiving a gift valued in excess of \$100 in the aggregate over the course of the calendar year from a vendor, lobbyist, principal or employer of a lobbyist who sells, leases or lobbies the governmental entity the official or employee serves. Section 2-444(a)(2), prohibits vendors, lobbyists, principals or employers of lobbyists from giving a gift in excess of \$100 in the aggregate over the course of a calendar year to an employee or official of a government entity they sell, lease or lobby.
- Section 2-444(e) prohibits any person or entity from offering, giving or agreeing to give an official or employee a gift and also prohibits employees and officials from accepting or agreeing 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.

Complainant also alleged that gifts provided by Neil Hirsch to Respondent on several other occasions, including \$2,948 in temporary housing at the guest house of his Wellington home (from June 9, 2012 through August 14, 2012), a vacation weekend paid for by Hirsch and valued at \$3,180 (from September 22, 2012 through September 24, 2012), and two (2) complementary tickets to a Boys and Girls Club Gala valued at \$450 (for an event taking place on December 1, 2012), were all given to Respondent by Hirsch as an improper *quid pro quo* to influence Respondent’s votes against the Equestrian Village project.

The investigation of these allegations determined that at the time he received the \$5,000 donation to his legal defense fund from Neil Hirsch (March 21, 2012), and the \$4,000 donation from Victoria McCullough (March 29, 2012), Respondent had not yet assumed his elected position (he was sworn into office on April 10, 2012), therefore these particular issues were found to lack legal sufficiency by COE Interim Director Megan Rogers.

There is no direct evidence linking the gifts and legal defense fund payments from Neil Hirsch, Victoria McCullough or Steven Rapaport and Respondent’s votes regarding the Equestrian Village Project. There is no direct evidence linking the gifts and legal defense fund payments from Neil Hirsch to Respondent’s votes regarding a local restaurant owner’s request for longer restaurant hours and expanded liquor license.

However, Respondent did accept gifts in excess of \$10,000 from Neil Hirsch since March of 2012. During the past year, Respondent voted to revoke two redevelopment orders related to the Equestrian Village Project, a development that Hirsch was publically opposed to and that abuts Hirsch's restaurant-property. In addition to the gifts received directly from Hirsch, Respondent accepted an additional \$5,000 from Steven Rapaport, Mr. Hirsch's business associate and \$4,000 from Victoria McCullough, a Wellington land owner and principal of a lobbyist whose property is located within the development area of another Bellissimo backed development, and where Bellissimo was attempting to have a road placed near the rear property line of a home she has purchased.

Sworn statements taken during the investigation by COE staff also allege that Respondent attempted to use his official position to facilitate the sale of the Hirsch-owned Players Club, allegedly guaranteeing his vote to allow a new owner to keep the Players Club's special status regarding hours and licensing. Finally, in January 2013 Respondent accepted a contract for services with the Palm Beach County Sheriff's Foundation valued in excess of \$5000 a month. Both Neil Hirsch and Victoria McCullough are significant donors to the Foundation and serve as members of the Board of Directors. The frequency and reoccurring nature of these payments gives rise to an inference that these gifts and Respondent's votes may be connected.



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.

Please list all information where you would like to be contacted. Our preference is email.

Name: Mark Bellissimo, Managing Member of Wellington Equestrian Partners, LLC E-Mail: mbellissimo@comcast.net
Address: 13501 South Shore Blvd, Suite 105
City: Wellington Zip: 33414
Home #: _____ Work #: _____ Cell #: _____

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

Please provide as much information as possible.

Name: John Greene E-Mail: jgreene@wellingtonfl.gov
Address: 12300 Forest Hill Blvd
City: Wellington Zip: 33414
Home #: _____ Work #: (561) 791-4000 Cell #: _____
Title/Office Held or Sought: Village of Wellington Councilman

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]
Signature of Person Making Complaint

STATE OF FLORIDA

COUNTY OF Palm Beach

Sworn to (or affirmed) and subscribed before me this 9th day of January 2013, by

Mark Bellissimo
(Name of Person Making Statement)

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

N/A

[Signature]
(Signature of Notary Public, State of Florida)



JUDITH A. MCCULLOCH
MY COMMISSION # DD 902743
EXPIRES: July 2, 2013

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

Statement for Palm Beach County Ethics Complaint against Councilman John Greene

- This ethics complaint is being filed against John Greene, Council member of the Village of Wellington, because he has engaged in unethical behavior which has caused harm to the public and to the business interests of Wellington Equestrian Partners, LLC. In particular, Councilman Greene has corruptly used his power to secure benefits for certain individuals and has accepted valuable gifts in exchange for votes on certain matters before the Village Council. Further, he was offered and accepted prohibited lobbyist gifts, and failed to recuse himself on matters for which he had a conflict of interest. It is my belief that Councilman Greene was put into place on the Wellington Village Council in order to fulfill the personal political agenda and financial interests of certain individuals and that his actions over the last several months demonstrate this.
- As background to my allegations, it is important to note that John Greene was elected as a new Councilman of Wellington in March 2012, after the most controversial and heated election that Wellington has ever experienced, and that he is a longtime friend of Neil Hirsch, which will be further explained below. Jeremy Jacobs and his family funded approximately \$500,000 to a political action committee (the "Jacobs PAC") that supported a slate of three candidates in the election, which included John Greene, and launched false attacks and a smear campaign.
- The focus of the election controversy was the Equestrian Village project, which is a development project on 59.3 acres of land located on the corner of South Shore Boulevard and Pierson Road in Wellington. The original plans for the Equestrian Village project were announced in 2011, and included facilities for dressage competition (an equestrian discipline), other equestrian arenas, barns, rings and other equestrian support facilities, as well as a hotel, retail and restaurant spaces. In February 2012 (prior to Greene being elected to office), the previous Wellington Village Council approved the two initial development orders necessary for the Equestrian Village project to proceed. The Jacobs family, who own a 200-acre estate down the street from the project, were staunch opponents to the project. Neil Hirsch, owner of the Players Club Restaurant and property located next to the Equestrian Village project, was also a staunch opponent of the project. The development approvals were issued just a little over a month before three of the five Wellington Village Council seats were up for election.
- The most controversial part of the Equestrian Village project was the hotel that was proposed to be built on the property. The Jacobs family formed a PAC to attack the Equestrian Village project, promote their Village Council candidates that were opposed to the project and to attack any candidates that were supportive of the Equestrian Village project. The Jacobs PAC supported a slate of three candidates: Bob Margolis, John Greene and Matt Willhite. The Jacobs family and their close ally, Neil Hirsch, also formed a group called the Wellington Equestrian Preservation Alliance, Inc. (the "Alliance"), who lobbied the Village Council, both before and after the election, to deny, and after passage, to revoke the Equestrian Village development approvals. Lou Jacobs served as president of the Alliance and Neil Hirsch served as a director.

- During the campaign, John Greene publically stated that he was against the hotel portion of the Equestrian Village project, but that he supported the equestrian elements of the project. John Greene, Bob Margolis and Matt Willhite, the anti-Equestrian Village candidates, won the election.
- After the election, the applicant entities withdrew their application for certain development orders necessary for the hotel portions of the Equestrian Village project to proceed. Therefore the project became one focused on equestrian facilities and associated support structures for a commercial equestrian arena.
- Shortly after the election occurred, Neil Hirsch had a conversation with me where I discussed my intentions to build restaurants on the Equestrian Village property. Mr. Hirsch expressed to me his belief that we did not need more restaurants in Wellington. I believe he felt threatened by the competition that his Players Club Restaurant would face, just next door to the Equestrian Village property. When I explained to him that the Equestrian Village property had zoning and property rights associated with it that would allow for restaurants to be built he responded by saying: "We'll see about that." I believe he was foreshadowing his intent to block any such competition through his control over Councilman Greene and other councilmembers.
- Not long after my conversation with Mr. Hirsch took place, and within only a month after the anti-Equestrian Village candidates took office, the Village initiated a Status Review hearing of the Equestrian Village development orders (resolutions R2012-07 and R2012-08), under the guise of section 5.9.3 of Wellington's Unified Land Development Code ("LDR"), for an alleged failure to comply with the platting deadlines. It is important to note that these development orders pertained only to the equestrian elements of the Equestrian Village project, and that the hotel elements with its related portions were withdrawn prior to any votes by the new Village Council.
- The first Status Review hearing was set for May 22, 2012, where the Council had to make the decision whether to grant a ministerial extension of time on the platting deadlines in R2012-07 and R2012-08. Although no one would be harmed or prejudiced in any way by the granting of an extension, and the Village Staff fully supported the extension and set forth the various reasons for allowing it in the initial Staff Report to the Village Council, in a 3-2 vote with Margolis, Greene and Willhite (the Jacobs candidates) in the majority, voted against granting the ministerial extension and instead voted to revoke entirely the first of the two development orders. There were many reasons why the platting deadline was not met, all of which had to do with the Village and not the applicant. Since the details of this issue are not fully relevant to this complaint, I will leave them out. I can provide further information on the platting deadline issue if requested to do so. On July 10, 2012, the Village Council voted to revoke the second of the two Equestrian Village development orders in a 3-2 vote, again with Margolis, Greene and Willhite in the majority.
- Notably, the actions of the Council in revoking the development orders for the Equestrian Village property have led to a deferment of the property owners' rights to build allowable structures on the property for which it has the proper zoning, including restaurants.

- There are many facts that demonstrate that Councilman Greene was corruptly using his position on the Council to carry out the agenda of Mr. Hirsch and to benefit Mr. Hirsch's interests. In exchange, Mr. Hirsch has generously rewarded Councilman Greene with numerous gifts, some of which have been publicly disclosed by Councilman Greene. For example, on May 21, 2012, just one day prior to the Council's vote at the Status Review hearing, Councilman Greene sent an email inquiry to the Palm Beach County Commission on Ethics asking whether he could accept temporary housing from, Mr. Hirsch, a personal friend who is a director of an organization that employs a lobbyist and whether the value of the housing is reportable under the Palm Beach County Code of Ethics. It is clear from his own inquiry that Councilman Greene was being offered a valuable gift by Neil Hirsch, as early as May 21, 2012, and just prior to Councilman Greene voting on the Equestrian Village items. However, what Councilman Greene failed to tell the Ethics Commission in his inquiry is that Mr. Hirsch also had a financial interest in ensuring the failure and demise of the Equestrian Village project, which was up for vote on the day following his inquiry. Councilman Greene told the Ethics Commission that Mr. Hirsch owned a restaurant in the Village, but he did not disclose that the restaurant was located adjacent to the Equestrian Village property, that Mr. Hirsch had the most to lose or gain from the Council's decision as to the Equestrian Village project, and that Councilman Greene's vote on the Equestrian Village items could have an effect on Mr. Hirsch's property and its value.
- Councilman Greene failed to disclose the lodging gift he was being offered during the public Wellington Village Council hearing that took place on May 22, 2012 where Equestrian Village items were being discussed and voted on, and failed to disclose that Mr. Hirsch had an interest in seeing to the defeat of the project. Councilman Greene also failed to disclose these issues at the subsequent July 10, 2012 public hearing that included another Status Review for a development order for the Equestrian Village project, even though he was living with Mr. Hirsch at that time.
- This commission issued an ethics opinion dated June 8, 2012 in response to Councilman Greene's May 21, 2012 inquiry as to whether he could accept a lodging gift from Mr. Hirsch, who served as the director of the Alliance. This Commission opined that Councilman Greene was prohibited from accepting gifts over \$100 from Mr. Hirsch under the Palm Beach County Ethics Code, section 2-444(a), because Mr. Hirsch served as the director of the Alliance, which is a group that employs a lobbyist. A copy of the Commission's opinion is attached as Exhibit A. Notably, the Commission did not opine as to the conflict of interest Councilman Greene faced due to Mr. Hirsch's interest in the Players Club property because Councilman Greene did not provide that information.
- The significance of Mr. Hirsch's opposition to and personal interest in the Equestrian Village development orders cannot be overstated. In addition to Mr. Hirsch's role with the Alliance, Mr. Hirsch stood to benefit financially in several respects if the Equestrian Village project was revoked by the Village Council because of his ownership of the neighboring Players Club property. Mr. Hirsch's business would be harmed if competing restaurants were built on the Equestrian Village property. Further, the value of Mr. Hirsch's property would be enhanced if development of competing restaurants and facilities on the Equestrian Village property was blocked. Mr. Hirsch has displayed anti-Equestrian Village signs prominently on his Players Club property.

- Subsequent to the Village Council's revocation of the Equestrian Village development orders I was approached by Councilman Greene. He expressed to me that Mr. Hirsch had an interest in selling the Players Club property and that I should talk to Mr. Hirsch about purchasing it. Councilman Greene contacted me on two occasions to inform me of this and was insistent that I call Mr. Hirsch. Subsequently, Councilman Greene stated that since the Players Club property is not in the Equestrian Overlay Zoning District in Wellington that he, as a Councilman, would support putting a hotel on the Players Club property. He expressed his belief that the property was a good place for a hotel. Originally, a hotel was part of the Equestrian Village project design, but this part of the project was later withdrawn. I believe that Councilman Greene made the statement to me about supporting a hotel in order to increase the value of the Players Club property and to benefit Mr. Hirsch. I believe that I was used as a pawn so that Mr. Hirsch could enter into contract negotiations with several parties, and increase the price of the property. Mr. Hirsch has been actively seeking to sell the Players Club property at a premium and used Councilman Greene to facilitate the transaction.
- In mid-December 2012 Councilman Greene also met with Mr. Hirsch and another potential buyer of the Players Club property, Juan Gando, a local restaurant owner. There were discussions between Mr. Hirsch, Mr. Gando and Councilman Greene about purchasing the Players Club. Mr. Gando was concerned that, if he bought the property, the Players Club Restaurant would not be able to continue operating with business hours until 3 am, because this would require Village Council approval. Councilman Greene indicated to Mr. Gando that, as Councilman, he would support the extended operating hours until 3 am. Mr. Hirsch then indicated to Mr. Gando, in front of Councilman Greene, that he didn't need to worry about getting the Village Council's approval because he could call up Councilman Margolis and Councilman Willhite and he could set up similar meetings with each of them, Mr. Hirsch and Mr. Gando. Mr. Hirsch expressed, in front of Councilman Greene, that he was confident that he could get their support. Mr. Gando's affidavit setting forth these discussions is attached as Exhibit E. In addition to the other misconduct outlined herein, I believe that Mr. Hirsch is acting as an improper intermediary between the Councilmembers to secure their consent and votes in his favor.
- I offered to pay Mr. Hirsch \$6 million for the Players Club property, which is significantly above market price for a restaurant parcel in that area. Mr. Gando later offered to pay Mr. Hirsch \$8.75 million for the Players Club property. Councilman Greene's votes to revoke development orders for the Equestrian Village increased the value of the Players Club property, and now he is trying to facilitate deals with potential buyers of the property on behalf of Mr. Hirsch. Councilman Greene is using his influence to escalate the price of the Players Club property. Through information and belief, it is my understanding that the Players Club property was also offered to the Jacobs family, and that a contract for the property was entered into with that family or a related individual or entity, but it is unclear whether it has closed.
- These allegations support my belief that Councilman Greene's actions are controlled by Mr. Hirsch and that Councilman Greene is improperly and corruptly using his power as a public officer to carry out the agenda of Mr. Hirsch and to benefit Mr. Hirsch. As the owner of the neighboring commercial property, Mr. Hirsch has the largest financial stake in the outcome of the development on the Equestrian Village property.

- To add insult to injury, the mid-December 2012 meeting between Mr. Gando, Councilman Greene and Mr. Hirsch took place at one of Mr. Gando's restaurants. Councilman Greene and Mr. Hirsch consumed food and beverage in the approximate amount of \$180, and were not charged for it. See Mr. Gando's Affidavit which supports this statement. Therefore, Councilman Greene received a gift of food and beverage which he has failed to disclose.
- Councilman Greene has accepted numerous valuable gifts from Mr. Hirsch and from associates of Mr. Hirsch that have a significant interest in the Players Club property. Councilman Greene filed a Form 9 Quarterly Gift Disclosure with the State, received on December 25, 2012, as well as a PBC Form Yearly Gift Disclosure form. A copy of these is attached as Exhibit B. The Disclosures indicate that Councilman Greene received: (1) temporary housing in Mr. Hirsch's guesthouse from June 9, 2012 through August 14, 2012, with a monetary value of \$2,948.00; (2) a vacation from Mr. Hirsch from September 22-24, 2012, with a monetary value of \$3,180.39; and (3) tickets to the Boys & Girls Club Annual Gala, with a monetary value of \$450.00. Furthermore, the Disclosures indicate that Councilman Greene received a \$5,000 contribution to his "Legal Defense Fund" from Steven Rappaport. Mr. Rappaport is the Secretary of Sperin, LLC which does business as the Players Club. Accordingly, Councilman Greene received gifts with a value in excess of \$11,500 from individuals who have financial interests in the Players Club property, and in the defeat of the Equestrian Village development. Upon information and belief, it is my understanding that Councilman Greene was also given a vacation to the Hamptons by Mr. Hirsch in July 2012, which has not been disclosed pursuant to the gift disclosure requirements.
- Upon information and belief, it is also my understanding that Councilman Greene is a frequent patron of the Players Club restaurant and I believe this Commission should determine whether he received free meals that he has not disclosed as gifts, as well as whether these were improper lobbyist gifts. I believe there are servers in the Players Club restaurant that can be interviewed to provide further information. Further, although Councilman Greene disclosed lodging in Mr. Hirsch's guesthouse as a gift, he did not disclose receipt of meals during the time period that he stayed in the residence. I believe this needs to be further investigated.
- It is my belief that Councilman Greene had an inherent conflict of interest in voting on Equestrian Village items that affected the Players Club property, since his vote would affect the person that was giving him free housing and who was a staunch opponent of the Equestrian Village project. Further, it is also my belief that the gifts that Councilman Greene received from Mr. Hirsch and the Secretary of the Players Club, were meant to unduly influence his vote on the Equestrian Village development orders, to the benefit of Mr. Hirsch, and that Councilman Greene corruptly accepted these and other gifts in exchange for his vote. It should be noted that Mr. Hirsch also provided a \$2,500 contribution to Mayor Margolis' Legal Defense fund, on the eve of the first Status Review hearing held on May 22, 2012. I have filed separate State and County ethics complaints as to the improper gifts to Mayor Margolis, and I will be filing a separate complaint with the State of Florida Commission on Ethics regarding Councilman Greene's actions. Mr. Hirsch, through his gifts, secured favorable votes from councilmembers.

- Further, I believe that the lodging gift to Councilman Greene is a prohibited lobbyist gift under Palm Beach County Ethics Code, section 2-443, which prohibits accepting gifts in excess of \$100 from lobbyists, as well as their principals and directors. As this Commission has already opined, Councilman Greene was prohibited from accepted the lodging gift from Mr. Hirsch. To evade this Commission's opinion, Mr. Hirsch claims he resigned as the director of the Alliance on June 8, 2012, one day before Councilman Greene claims to have moved into the guesthouse. First, I do not believe that Mr. Hirsch resigned on that date because public records were not filed with the State indicating his resignation until several months later. Coincidentally, these documents were filed on August 15, 2012, just one day after Councilman Greene actually recused himself from a vote on a different Equestrian Village item on August 14, 2012. Councilman Greene's recusal on the August 14, 2012 Equestrian Village items due to a conflict of interest begs the question of why didn't he recuse himself for the May 22, 2012 and July 10, 2012 votes. If a conflict due to Mr. Hirsch's financial interests existed on August 14, 2012, the same conflict existed in May and July 2012. This is further set forth below. Further, I will be pursuing, through a separate action, a subpoena of the email transmission records pertaining to Mr. Hirsch's alleged resignation from the Alliance on June 8, 2012. I believe that the email Mr. Hirsch has previously provided to this Commission indicating that a resignation occurred on June 8, 2012, should be investigated. Second, even if Mr. Hirsch did resign as a director of the Alliance on June 8, 2012, it is clear that he offered valuable gifts to Councilman Greene in May 2012 while Mr. Hirsch was serving as the director of the Alliance, which had already lobbied the Village Council on several occasions against the Equestrian Village project. I believe that Councilman Greene took the opportunity and accepted the gifts from Mr. Hirsch in May 2012 or earlier. I don't believe that this Commission should construe strictly what date Councilman Greene moved into Mr. Hirsch's guesthouse, but instead look at the bigger picture of the gifts being provided, their timing and the actions that Councilman Greene took in return.
- Councilman Greene's disclosure of the Hirsch lodging gift was also untimely, in violation of Section 2-444 of the County Code of Ethics and §112.3148, Florida Statutes, which require that the disclosure be filed "not later than the last day of each calendar quarter, for the previous calendar quarter, containing a list of gifts which he or she believes to be in excess of \$100 in value". He received lodging in June 2012, and therefore was required to disclose this by the last day of the quarter ending in September. Yet the disclosure was not filed until December 25, 2012. I believe that Councilman Greene only filed these gift disclosures at the end of December 2012 because there was scrutiny at that time over certain gift disclosures that had been filed by Mayor Margolis.
- Of further note is that the deposit of funds into a "Legal Defense Fund" is suspect because, although there was litigation over a voting tally error that occurred when the Wellington election ballots were being counted, these issues were resolved at the end of March 2012. Yet Councilman Greene accepted money for a Legal Defense fund on November 21, 2012, when there was no pending litigation as to the recount at that time, and no need for Legal Defense on the issue.
- It is my belief that Councilman Greene corruptly used his position as Councilmember to gain benefits for Mr. Hirsch, and that he accepted gifts from Mr. Hirsch in exchange for his votes

to revoke the Equestrian Village development orders. Notably, Councilman Greene recused himself from a discussion and vote on an Equestrian Village item that came before the Village Council during an August 14, 2012 Council meeting, and on the August 13, 2012 Agenda Review discussion of the item. The Form 8B Memorandum of Voting Conflict for County, Municipal, and other Local Public Officers that he filed is attached hereto as Exhibit C. The form indicates that he recused himself because of a potential conflict of interest with regard to his relationship with Mr. Hirsch and the effect of his vote on the Players Club property. Similarly, Councilman Greene also recused himself from another vote that day on a separate matter before the Village Council which affected Mr. Hirsch's interests. The Form 8B for that recusal is attached as Exhibit D. Clearly Councilman Greene did have a conflict of interest in voting on items that financially benefitted Mr. Hirsch, the person with the most to gain or lose from the Council's decisions and revocation of rights on the Equestrian Village property, and with whom Councilman Greene was living. Councilman Greene has admitted a conflict and he should have also recused himself from the May 22, 2012 and July 10, 2012 votes on the Equestrian Village Status Review items, as required by the County Ethics Code, section 2.4439(c).

- In my opinion, Councilman Greene's actions constitute a severely corrupt abuse of power and violation of numerous ethical provisions. I believe that the Commission should impose the harshest of sanctions against Councilman Greene, including his removal from office, revocation of the improper votes he took with regard to Equestrian Village Status Review items on May 22, 2012 and July 10, 2012, and refer the matter to the State Attorney for potential criminal penalties.



Palm Beach County Commission on Ethics

Commissioners

Manuel Farach, Chair
Robin N. Fiore, Vice Chair
Edward Rodgers
Ronald E. Harbison
Daniel T. Gato

Executive Director

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.

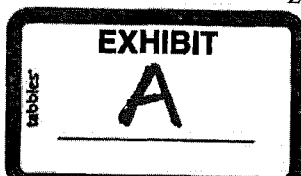
Your friend (the Donor) is not a vendor or lobbyist who does business with the Village. He is a retired businessman who currently owns a restaurant located within the Village. Nor do you have any business relationship with the donor or serve on any board, committee or commission together.

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.

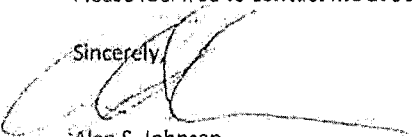
As a state reporting individual, the Code does not impose additional requirements other than the submission of a copy of any state required report to the COE.

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)

243147

Form 9		QUARTERLY GIFT DISCLOSURE		COMMISSION ON ETHICS	
		(GIFTS OVER \$100)		DATE RECEIVED:	
LAST NAME -- FIRST NAME -- MIDDLE NAME:			NAME OF AGENCY:		
GREENE SOHN			Village of Wellington		
MAILING ADDRESS:			OFFICE OR POSITION HELD:		
11226 Maritime Ct.			Councilman		
CITY:	ZIP:	COUNTY:	FOR QUARTER ENDING (CHECK ONE):		YEAR
Wellington	33449	Palm Beach	<input type="checkbox"/> MARCH <input type="checkbox"/> JUNE <input checked="" type="checkbox"/> SEPTEMBER <input type="checkbox"/> DECEMBER		2012

PART A — STATEMENT OF GIFTS

Please list below each gift, the value of which you believe to exceed \$100, accepted by you during the calendar quarter for which this statement is being filed. You are required to describe the gift and state the monetary value of the gift, the name and address of the person making the gift, and the date(s) the gift was received. If any of these facts, other than the gift description, are unknown or not applicable, you should so state on the form. As explained more fully in the instructions on the reverse side of the form, you are not required to disclose gifts from relatives or certain other gifts. You are not required to file this statement for any calendar quarter during which you did not receive a reportable gift.

DATE RECEIVED	DESCRIPTION OF GIFT	MONETARY VALUE	NAME OF PERSON MAKING THE GIFT	ADDRESS OF PERSON MAKING THE GIFT
6/9/12 - 8/14/12	Temporary Housing	\$2946 ⁰⁰	Neil Hirsch	12076 Polo Club Rd Wellington, FL 33414
9/22/12 - 9/24/12	Vacation	\$3180 ³⁹	Neil Hirsch	12076 Polo Club Rd Wellington, FL 33414
11/21/12	Contribution to Legal Defense Fund	\$5000 ⁰⁰	Steven Rapaport	316 Garden Rd Palm Beach, FL 33480
12/1/12	Boys & Girls Club Annual Gala	\$450 ⁰⁰	Neil Hirsch	12076 Polo Club Rd Wellington, FL 33414

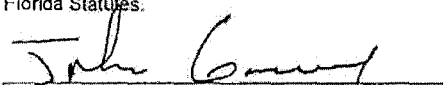
☐ CHECK HERE IF CONTINUED ON SEPARATE SHEET

PART B — RECEIPT PROVIDED BY PERSON MAKING THE GIFT

If any receipt for a gift listed above was provided to you by the person making the gift, you are required to attach a copy of that receipt to this form. You may attach an explanation of any differences between the information disclosed on this form and the information on the receipt.

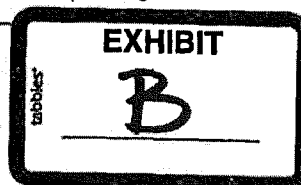
☐ CHECK HERE IF A RECEIPT IS ATTACHED TO THIS FORM

PROCESSED**PART C — OATH**

I, the person whose name appears at the beginning of this form, do depose on oath or affirmation and say that the information disclosed herein and on any attachments made by me constitutes a true accurate, and total listing of all gifts required to be reported by Section 112.3148, Florida Statutes.  SIGNATURE OF REPORTING OFFICIAL	STATE OF FLORIDA COUNTY OF <u>Palm Beach</u> Sworn to (or affirmed) and subscribed before me this <u>20th</u> day of <u>December</u> , 20 <u>12</u> by <u>John Greene</u> <u>Awilda Rodriguez</u> (Signature of Notary Public State of Florida) Expires: <u>8/23/16</u> (Print, Type, or Stamp Name of Notary Public and Commission #) Personally Known <input checked="" type="checkbox"/> <u>Not</u> Known Type of Identification Produced <u>Notary Public Identification</u>

PART D — FILING INSTRUCTIONS

This form, when duly signed and notarized, must be filed with the Commission on Ethics, P.O. Drawer 15709, Tallahassee, Florida 32317-5709; physical address: 3600 Maclay Blvd. South, Suite 201, Tallahassee, Florida 32312. The form must be filed no later than the last day of the calendar quarter that follows the calendar quarter for which this form is filed (For example, if a gift is received in March, it should be disclosed by June 30.)



PBC Gift Form**YEARLY GIFT DISCLOSURE
(GIFTS OVER \$100)**

LAST NAME -- FIRST NAME -- MIDDLE NAME GREENE JOHN		NAME OF AGENCY Village of Wellington	
MAILING ADDRESS 11226 Maritime Ct		DEPARTMENT	OFFICE OR POSITION HELD COUNCILMAN
CITY WELLINGTON	ZIP 33449	FOR YEAR 2012	

PART A — STATEMENT OF GIFTS

Please list below each gift, the value of which you believe to exceed \$100, accepted by you during the calendar year (October 1-September 30) for which this statement is being filed. You are required to describe the gift and state the monetary value of the gift, the name and address of the person making the gift, and the date(s) the gift was received. If any of these facts, other than the gift description, are unknown or not applicable, you should so state on the form. As explained more fully in the instructions on page 2 of the form, you are not required to disclose gifts from relatives or certain other gifts. You are not required to file this statement for any calendar year during which you did not receive a reportable gift.

DATE RECEIVED	DESCRIPTION OF GIFT	MONETARY VALUE	NAME OF PERSON MAKING THE GIFT	ADDRESS OF PERSON MAKING THE GIFT
6/9/12 - 6/14/12	Temporary Housing	\$2948.00	Neil Hirsch	12076 Poto Club Rd Wellington, FL 33414
9/22/12 - 9/24/12	Vacation	\$3180.39	Neil Hirsch	12076 Poto Club Rd Wellington, FL 33414
11/21/12	Contribution to Legal Defense Fund	\$5000.00	Steven Rapaport	316 Garden Rd Palm Beach FL 33481
12/1/12	Boys & Girls Club Annual Gala	\$450.00	Neil Hirsch	12076 Poto Club Rd Wellington FL 33414

☐ CHECK HERE IF CONTINUED ON SEPARATE SHEET

PART B — RECEIPT PROVIDED BY PERSON MAKING THE GIFT

If any receipt for a gift listed above was provided to you by the person making the gift, you are required to attach a copy of that receipt to this form. You may attach an explanation of any differences between the information disclosed on this form and the information on the receipt.

☐ CHECK HERE IF A RECEIPT IS ATTACHED TO THIS FORM

PART C — OATH

I, the person whose name appears at the beginning of this form, do depose on oath or affirmation and say that the information disclosed herein and on any attachments made by me constitutes a true accurate and total listing of all gifts required to be reported by Article XIII, Sec. 2-444 of the Palm Beach County Code of Ethics.

County Code of Ethics.

John Greene
SIGNATURE OF REPORTING OFFICIAL

PART D — FILING INSTRUCTIONS

This form, when duly signed, must be filed with the Commission on Ethics, 2633 Vista Parkway, West Palm Beach, Florida 33411. The form must be filed no later than the first day of November for the previous reporting year.



WELLINGTON
12300 West Forest Hill Boulevard
Wellington, Florida 33414

WEST PALM BCH FL 334
21 DEC 2012 PM 11



Commission on Ethics
P.O. Drawer 15709
Tallahassee, FL 32317-5709

32317570909

GREENE / GLOBAL DRESSAGE RECUSAL

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS	
LAST NAME—FIRST NAME—MIDDLE NAME Greene, John	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE Village of Wellington Council
MAILING ADDRESS 12300 Forest Hill Blvd.	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF:
CITY Wellington	<input checked="" type="checkbox"/> CITY <input type="checkbox"/> COUNTY <input type="checkbox"/> OTHER LOCAL AGENCY
COUNTY Palm Beach County	NAME OF POLITICAL SUBDIVISION: Village of Wellington
DATE ON WHICH VOTE OCCURRED August 14, 2012	MY POSITION IS: <input checked="" type="checkbox"/> ELECTIVE <input type="checkbox"/> APPOINTIVE

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies equally to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

Your responsibilities under the law when faced with voting on a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing the reverse side and filing the form.

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office **MUST ABSTAIN** from voting on a measure which inures to his or her special private gain or loss. Each elected or appointed local officer also is prohibited from knowingly voting on a measure which inures to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent organization or subsidiary of a corporate principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

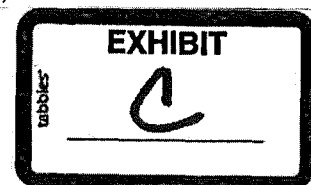
WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

APPOINTED OFFICERS:

Although you must abstain from voting in the situations described above, you otherwise may participate in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes. (Continued on other side)



APPOINTED OFFICERS (continued)

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, John Greene, hereby disclose that on August 14, / August 13, 20 12.

(a) A measure came or will come before my agency which (check one)

- ☐ inured to my special private gain or loss;
- _____ inured to the special gain or loss of my business associate, _____;
- _____ inured to the special gain or loss of my relative, _____;
- _____ inured to the special gain or loss of Neil Hirsch, by
~~whom I am retained;~~ See attached explanation.
- _____ inured to the special gain or loss of _____, which
is the parent organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

Council Agenda Item 8D: Discussion of Proposed Settlement Agreement for Global Dressage

8-28-12
Date Filed

John Greene
Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.

Council Agenda Item 8D: Discussion of Proposed Settlement Agreement for Global Dressage.

I have a 30-year personal relationship with Mr. Neil Hirsch, who controls the entity, which owns the Players Club restaurant in Wellington, FL. Mr. Hirsch was kind enough to offer me temporary residency in his guesthouse located on his property inside Palm Beach Polo & Country Club. Prior to accepting his offer, I requested an opinion from the Palm Beach County Commission on Ethics in May of 2012. I have fully complied with their ruling on this matter.

The guesthouse on his property where I temporarily resided as well as the Players Club restaurant is minutes away from my marital residence, which I still own. This living arrangement began on June 9, 2012 and I moved out of his guesthouse and returned to my primary residence on August 15, 2012.

Subsequent to my stay on Mr. Hirsch's property, an item came up for discussion relating to stipulations, and/or settlement of various litigation involving Equestrian Village property and the use of the property for the 2012-2013 equestrian season. The specific information related to the matter is set forth in the back up materials to agenda item 8D.

Among the matters in dispute between the parties is a master plan approval set forth in Resolution 2012-07. A condition of the master plan approval potentially affected the Players Club property and specifically a potential relocation of an entrance onto the property.

Although I am uncertain as to whether my relationship with Mr. Hirsch as his house guest constitutes a conflict of interest of the state and county ethics commission, in an abundance of caution and to avoid the appearance of impropriety, I was advised by the Village of Wellington city attorney, Jeff Kurtz, to recuse myself from any vote on this matter until and unless different direction is returned from the Palm Beach County Commission on Ethics.

It is my full intent to report the use of Mr. Hirsch's guesthouse as a gift on the appropriate gift report when it becomes due.

Greene / Blue Cypress Room

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

LAST NAME—FIRST NAME—MIDDLE NAME Greene, John		NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE Village of Wellington Council	
MAILING ADDRESS 12300 Forest Hill Blvd.		THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF:	
CITY Wellington	COUNTY Palm Beach County	<input checked="" type="checkbox"/> CITY <input type="checkbox"/> COUNTY <input type="checkbox"/> OTHER LOCAL AGENCY	
DATE ON WHICH VOTE OCCURRED August 14, 2012		NAME OF POLITICAL SUBDIVISION: Village of Wellington	
		MY POSITION IS: <input checked="" type="checkbox"/> ELECTIVE <input type="checkbox"/> APPOINTEE	

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies equally to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

Your responsibilities under the law when faced with voting on a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing the reverse side and filing the form.

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office **MUST ABSTAIN** from voting on a measure which inures to his or her special private gain or loss. Each elected or appointed local officer also is prohibited from knowingly voting on a measure which inures to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent organization or subsidiary of a corporate principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; and

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

APPOINTED OFFICERS:

Although you must abstain from voting in the situations described above, you otherwise may participate in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes. (Continued on other side)



APPOINTED OFFICERS (continued)

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, John Greene, hereby disclose that on August 14, / August 13, 20 12.

(a) A measure came or will come before my agency which (check one)

- ☐ inured to my special private gain or loss;
- ☐ inured to the special gain or loss of my business associate, _____;
- ☐ inured to the special gain or loss of my relative, _____;
- ☐ inured to the special gain or loss of Neil Hirsch ~~whom I am retained on~~ See attached explanation by _____;
- ☐ inured to the special gain or loss of _____ which is the parent organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

Council Agenda Item 8C: Approval of Settlement Agreement in Palm Beach Holdings V. Village of Wellington Case #502012CA013288.

8-24-12
Date Filed

[Signature]
Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.

Council Agenda Item 8C: Approval of Settlement Agreement in Palm Beach Holdings V. Village of Wellington Case #502012CA013288

I have a 30-year personal relationship with Mr. Neil Hirsch, who is a resident in Palm Beach Polo & Country Club. Due to a personal family matter, Mr. Hirsch was kind enough to offer me temporary residency in his guesthouse located on his property inside Palm Beach Polo & Country Club. Prior to accepting his offer, I requested an opinion from the Palm Beach County Commission on Ethics in May of 2012. I have fully complied with their ruling on this matter.

His property is minutes away from my marital residence, which I still own. This living arrangement began on June 9, 2012 and I moved out of his guesthouse and returned to my primary residence on August 15, 2012.

Subsequent to my stay on Mr. Hirsch's property, I became aware of an issue involving the property adjacent to Mr. Hirsch's residence, namely the Blue Cypress plat and Blue Cypress subdivision. While Mr. Hirsch was not an applicant and was not named in the litigation that arose out of the Village of Wellington's staffs' handling of the dispute with the developer of the property, the site plan and proposed plat did affect a piece of property owned by Chucker Holdings, Inc., which Mr. Hirsch has a controlling interest. The details of the dispute and the proposed settlement are contained in agenda item 8C.

Although I am uncertain as to whether this relationship with Mr. Hirsch as his house guest constitutes a conflict of interest of the state and county ethics commission, in an abundance of caution and to avoid the appearance of impropriety, I was advised by the Village of Wellington city attorney, Jeff Kurtz, to recuse myself from any vote on this matter until and unless different direction is returned from the Palm Beach County Commission on Ethics.

It is my full intent to report the use of Mr. Hirsch's guesthouse as a gift on the appropriate gift report when it becomes due.

AFFIDAVIT OF JUAN GANDO

STATE OF FLORIDA)
COUNTY OF PALM BEACH)

BEFORE ME, the undersigned personally appeared, Juan Gando, who after being duly sworn, deposes and states:

1. My name is Juan Gando and I am over the age of eighteen (18) and have personal knowledge of the facts contained herein.

2. I am the owner of three restaurants in Wellington. In mid-December 2012, I met with Neil Hirsch at the Players Club restaurant regarding my potential purchase of the Players Club property for \$8.75 million. I was concerned that, if I bought the property, the Players Club Restaurant would not be able to continue operating with business hours until 3 am, because this would require Village Council approval. While I was meeting with Mr. Hirsch, he called Councilman Greene to join us. After Mr. Green's arrival, he indicated to me that, as Councilman, he would support the extended operating hours until 3:00 am. Mr. Hirsch then indicated to me, in front of Councilman Green, that I did not need to worry about getting the Village Council's approval because he could call up Councilman Margolis and Councilman Willhite and he could set up similar meetings with each of them, Neil and me. He expressed, in front of Councilman Greene, that he was confident that he could get their support.

3. Later that evening, at Mr. Hirsch's request, I met a second time with Mr. Hirsch and Councilman Greene. This meeting took place at my restaurant Sea Horse Fashion Cuisine. During this meeting, Councilman Greene again stated to me that, as Councilman, he would support the extended operating hours until 3:00 am. While at my restaurant, Mr. Hirsch and Councilman Greene consumed approximately \$180 of food and beverage, which I did not charge them for.

FURTHER AFFIANT SAYETH NOT.

Juan Gando

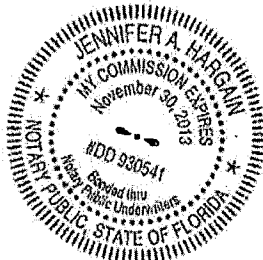
STATE OF FLORIDA)
COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me, this 9 day of January, 2013 by Juan Gando, who is personally known to me or who has produced FL Drivers License (type of identification /drivers license) as identification.

Notary Public

(SEAL)

22M9792



EXHIBIT

E

PALM BEACH COUNTY COMMISSION ON ETHICS
MEMORANDUM OF INQUIRY

To: Megan Rogers, Interim Executive Director
From: Mark E. Bannon, Senior Investigator
Re: AN 13-002 – Respondent: John Greene, Council Member, Village of Wellington

- **Background**

This matter came to the attention of COE staff via a sworn complaint filed in January, 2013. The Complainant is Mark Bellissimo of Wellington Equestrian Partners, 14440 Pierson Rd., Wellington, FL. The Respondent listed on this complaint is John Greene, current Council Member of the Village of Wellington (the Village). The complaint itself is a four (4) page document including a “statement of facts” that explains the substance of the complaint. Also included in this package were several documents presented as evidence of the issues raised within the statement of facts. This complaint was sworn to by Complainant and properly notarized on January 9, 2013.

The delay in investigation of this specific complaint is due to staff completing other investigations in which some of the issues raised in this complaint were based on similar facts and circumstances as those investigations. Some material information regarding and addressed in this Inquiry was obtained during these related investigations. (C12-015 and C12-016)

Complainant lists several issues within his statement of facts. As background, Complainant discusses the “Equestrian Village” project, as well as the controversy surrounding Respondent and two (2) other local candidates for Village office concerning the local election in 2012, where several lawsuits were filed and a voting re-count was conducted by the PBC Supervisor of Elections. Complainant states that the 2012 Village elections included a slate of three (3) candidates, including Respondent (as a candidate for Village Council), Robert Margolis (as a candidate for Village Mayor), and Matt Wilhite (as an incumbent Village Council Person running for re-election), who received extensive financial support from a Political Action Committee (the PAC) formed by the Jacobs’ families. The Jacobs’ families, primarily through a privately held business (Solar Sportsystems, Inc.), are land owners within the Village, who oppose the Equestrian Village project. The Jacobs properties are in close proximity to the Equestrian Village project site. Solar Sportsystems, Inc. is listed by the PBC Property Appraisers online records¹ as having ownership interest in nine (9) properties, seven (7) of which lie within the Village. At least two (2) other residential properties are registered as belonging to members of the Jacobs family directly.

Complainant submitted a supplemental filing for this case. The issues presented by the supplemental filing are addressed in this Inquiry.

The overriding issue raised by this complaint is that Respondent received multiple gifts prohibited by the Code of Ethics (the Code), from principals of lobbyists who lobbied the Village and/or that Respondent “received this compensation in exchange for his votes on important development matters before the Village of Wellington Council”.

As evidence of this general allegation, Complainant offers the following specific accusations:

1. That Respondent received a gift to his legal defense fund in the amount of \$4,000 from Victoria McCullough and that at the time of this donation, Victoria McCullough was the principal of a lobbyist who was registered to lobby in Village.

(The matter of this “prohibited gift” of \$4,000 from McCullough to Respondent’s Legal Defense Account has previously been investigated by COE staff under case number AN 12-024 SI, initiated and investigated by COE staff beginning November 19, 2012, prior to this complaint being filed. This \$4,000 donation to John Greene’s legal defense fund was received on March 28, 2012, prior to his being sworn into office on April 10, 2012. COE therefore had no direct jurisdiction over this donation, nor was the donation a “reportable gift” under the Code of Ethics since it was received prior to Respondent taking office.)

¹ Online records for the PBC Property Appraisers Office, accessed through their website (www.pbcgov.org/papa)

2. That Respondent received a prohibited donation of \$2,500 to his Legal Defense Fund from Neil Hirsch, owner of the Player's Club Restaurant in the Village. This fund was set up to address the 2012 local election controversy. Complainant describes Mr. Hirsch's property as "abutting" the Equestrian Village" site. The donation from Hirsch was made on or about May 17, 2012, and Complainant alleges that this donation was prohibited under the Code of Ethics because at the time of making this donation to Respondent, Hirsch was a member of the board of directors of the Wellington Equestrian Preservation Alliance (WEPA), an organization that lobbied the Village Council.
3. That Respondent received a \$5,000 donation to his Legal Defense Fund on November 21, 2012 from Steven Rappaport, reported on Respondent's Quarterly Gift Disclosure form in December 2012. This form was signed by respondent on December 20, 2012, and received by the Florida Commission on Ethics on December 25, 2012. Complainant alleges that Rappaport is an officer of Sperin, LLC, which owns Players Club, and thus also had a financial interest in the Equestrian Village project.
4. That the May 17, 2012 donation of \$2,500 from Neil Hirsch, the November 21, 2012 donation of \$5,000 from Steven Rapaport, and the March 28, 2012 gift of \$4,000 from Victoria McCullough to Greene, were given in exchange for Respondent's vote to revoke previous approvals given by the former Village Council regarding the Equestrian Village project. The Complaint alleges that, "Within a month after the Anti-Equestrian candidates took office, the Village initiated a Status Review hearing of the Equestrian Village development orders (resolutions R2012-07 and R2012-08), under the guise of section 5.9.3 of Wellington's Unified Land Development Code ("LDR"), for an alleged failure to comply with the platting deadlines. The first hearing was set for May 22, 2012, where Council had to make the decision whether to grant a ministerial extension of time on the platting deadlines in R2012-07 and R2012-08." Complainant charges that Village staff supported an extension for the platting deadlines, however the extension was denied by a 3-2 vote, with Respondent and the two (2) other Council Members supported by the PAC, voting against the extension. On July 10, 2012, the Village Council voted to revoke the second development order (R2012-8), by the same vote (3-2) with the same three (3) officials voting against this extension. Complainant further states, "Ms. McCullough has also been a staunch opponent of [other] development projects in Wellington that I have undertaken through entities I control."
5. That the donations to Respondent's Legal Defense Fund were "suspect", because, "although there was litigation over a voting tally error that occurred when the Village election ballots were being counted, these issues were resolved at the end of March 2012." This date was before these donations were made to the Legal Defense Fund.
6. That several other "gifts" given by Neil Hirsch to Respondent, including \$2,948 in temporary housing at Hirsch's guest house from June 9, 2012 to August 14, 2012, a vacation valued at \$3,180 from September 22, 2012 to September 24, 2012, and tickets to a Boys and Girls Club Gala valued at \$450 were given in exchange for Respondent's vote on projects of interest to Hirsch.

On February 13, 2013, Complainant sent a "supplemental statement" in which he also alleged the following additional violations of the Code of Ethics by Respondent:

7. That as members of the board of directors of the Palm Beach County Sheriff's Foundation (the Foundation) Neil Hirsch and Victoria McCullough secured employment with the Foundation for the Respondent in exchange for Respondent's ongoing support of their financial interests. Hirsch and McCullough have contributed in excess of \$50,000 the Foundation.
8. That Respondent misused his official position for his personal special financial benefit by listing his public position as a Village Council Member and training he has received in this role as part of his professional experience on his application.

- **Persons interviewed for this Inquiry**

The following persons believed to have knowledge about the allegations within this complaint were interviewed for this initial inquiry:

1. Mathew Forrest, Lobbyist for Solar Sportsystems, employed by Ballard Partners.
2. John Greene, Village of Wellington Council Member (Respondent).
3. Neil Hirsch, owner of Players Club Restaurant and personal friend of Council Member Greene.
4. Juan Gando, owner of three restaurants located within the Village of Wellington.
5. Mark Bellissimo, developer for Equestrian Village project (Complainant).

Respondent did not file state a Quarterly Gift Disclosure Form (Form 9) listing the \$4,000 donation from McCullough to his Legal Defense Fund because it was accepted before he took office on April 10, 2012. The donation of \$5,000 from Rapapport to the legal defense fund, and the \$2,948 in housing, \$3,180 in vacation expenses, and the \$450 for tickets were listed on Respondent's Quarterly Gift Disclosure Form. Copies of these forms were forwarded to COE staff as required by the Code of Ethics.² However, Respondent failed to report the \$2500 gift from Hirsch to his Legal Defense Fund from Hirsch received in May of 2012.

The relevant entries on this quarterly gift disclosure form are as follows:

John Greene December 2012 State of Florida Quarterly Gift Disclosure Form (Form 9)

Date Received	Description of Gift	Monetary Value	Name of Person Making Gift	Address of Person Making Gift
6/9/12 – 8/14/2012	Temporary housing	\$2948	Neil Hirsch	12076 Polo Club Rd. Wellington, FL 33414
9/22/12 – 9/24/12	Vacation	\$3148	Neil Hirsch	12076 Polo Club Rd. Wellington, FL 33414
11/21/12	Contribution to Legal Defense Fund	\$5000	Steven Rapapport	316 Garden Rd. Palm Beach, FL 33480
12/1/12	Boys & Girls Club Annual Gala	\$450	Neil Hirsch	12076 Polo Club Rd. Wellington, FL 33414

- **Documents submitted to file by Complainant in initial filing of complaint**

The following documents were submitted to the Inquiry file from Complainant:

1. Complaint Form signed by Complainant and notarized January 9, 2013. (1 Page)
2. Statement of complaint. (7 pages)
3. Supplemental Complaint Form signed by Complainant and notarized February 13, 2013. (1 Page)
4. Supplemental statement of complaint. (3 pages)
5. Copy of RQO 12-045, issued to Village of Wellington Council Member John Greene on June 8, 2012. (3 pages)
6. Copy of State of Florida Quarterly Gift Disclosure Form (Form 9) from Village of Wellington Council Member John Greene for the quarter ending December 2012, signed and notarized on December 20, 2012. (1 page)
7. Copy of PBC Gift Disclosure Form from Village of Wellington Council Member John Greene for 2012. (1 page)
8. Copy of envelope addressed to the PBC Commission on Ethics from the Village of Wellington. (1 page)
9. Copy of State of Florida Form 8B, Memorandum of Voting Conflict for County, Municipal, and Other Local Officials, regarding Village of Wellington Council Member John Greene advising of a voting conflict on August 14, 2012. Form listed the benefit as having inured to the special gain or loss of Neil Hirsch reference Council Agenda Item 8D: Discussion of proposed settlement agreement for Global Dressage, had an attached "explanation," and was signed by John Greene on August 8, 2012. (3 pages)

² Section 2-444(f)(1), PBC Code of Ethics.

10. Copy of State of Florida Form 8B, Memorandum of Voting Conflict for County, Municipal, and Other Local Officials, regarding Village of Wellington Council Member John Greene advising of a voting conflict on August 14, 2012. Form listed the benefit as having inured to the special gain or loss of Neil Hirsch reference Council Agenda Item 8C: Approval of settlement agreement in Palm Beach Holdings v. Village of Wellington case #502012CA013288, had an attached "explanation," and was signed by Greene on August 8, 2012. (3 pages)
11. Copy of Affidavit of Juan Gando, discussing a meeting attended by himself, Neil Hirsch, and John Greene regarding the potential purchase of the "Player's Club Restaurant" by Gando from Hirsch in mid-December 2012. This affidavit was signed and notarized on January 9, 2013 by Gando. (1 page)

- **Initial inquiry**

Complainant alleges that Respondent received prohibited gifts from Neil Hirsch, Steven Rapaport and Victoria McCullough by way of donations made by each to Respondent's Legal Defense Fund, as well as several other "gifts" from Hirsch as listed on Respondent's Form 9. Under the Code of Ethics, gifts to an official or employee of the county, or any municipality within the county may be prohibited under two (2) circumstances.

- Section 2-444(a)(1), *Gift law*, prohibits any official or employee of the county or a municipality from receiving a gift valued in excess of \$100 in the aggregate over the course of the calendar year from a vendor, lobbyist, principal or employer of a lobbyist who sells, leases or lobbies the governmental entity the official or employee serves. Similarly, §2-444(a)(2), prohibits vendors, lobbyists, principals or employers of lobbyists from giving a gift in excess of \$100 in the aggregate over the course of a calendar year to an employee or official of a government entity they sell, lease or lobby.
- Section 2-444(e) prohibits any person or entity from offering, giving or agreeing to give an official or employee a gift and also prohibits employees and officials from accepting or agreeing to accept a gift from a person or entity, because of:
 - An official public action taken or to be taken, or which could be taken;
 - A legal duty performed or to be performed, or which could be performed, or;
 - A legal duty violated or to be violated, or which could be violated by any official or employee.

Complainant states that Respondent violated both §2-444(a)(1) and §2-444(e) by accepting \$2,500 from Neil Hirsch and \$4,000 from Victoria McCullough as principals of lobbyists. Complainant alleges that Respondent violated §2-444(e) with regards to the \$5,000 donation provided by Steven Rapaport. We explore each of these prohibitions in a separate analysis. First, we must determine whether Hirsch and McCullough were principals of lobbyists who lobbied the Village at the time of their donations to the Legal Defense Fund. Based on documents obtained during a previous investigation, the \$4,000 donation to Respondent by Victoria McCullough was completed on March 29, 2012. Respondent did not take office as a Council person until he was sworn in on April 10, 2012. Regardless of whether McCullough was the employer of a lobbyist based on her employment of an attorney for a civil action against the Village, this donation is not prohibited based on the lobbyist gift law prohibitions in §2-444(a) because Respondent was not yet in office. However, regardless of when the donation was given, if it was provided in exchange for Respondent's official action as Complainant also alleges, the donation would be prohibited, and a violation of §2444(e).

The \$2,500 donation from Neil Hirsch to Respondent for his Legal Defense Fund was made on or about May 17, 2012, after Respondent was sworn into office. Therefore, the analysis of this issue is based on whether Neil Hirsch was a principal of a lobbyist when he made this donation. Complainant alleges that Neil Hirsch was a member of the board of directors of an organization that employed a lobbyist who lobbied the Village in May 2012, when the \$2,500 gift was given by Hirsch to Respondent. As evidence of this, Complainant submits a copy of a COE advisory opinion (RQO 12-045) prepared by the COE for Respondent on June 8, 2012. In the opinion, Respondent asks if he may accept a separate gift of temporary housing from Neil Hirsch, given that Hirsch is a member of the Board of Directors of a civic organization, the Wellington Equestrian Preservation Alliance (WEPA), who is the employer or principal of a lobbyist that lobbies the Village. The opinion states that he could not, and based on this opinion, Hirsch resigned from this Board prior to Greene accepting the temporary housing. Hirsch resigned from the board via email to WEPA's Executive Director, Mat Forrest, on or about June 9, 2012. However, because the donation of

\$2,500 to respondent's Legal Defense Fund was made on May 17, 2012, prior to Hirsch resigning a WEPA director, the issue must be explored further.

A separate issue is that the donation from Hirsch was not disclosed by the Respondent on his Florida Gift Reporting Form. This failure to disclose Hirsch's donation to Respondent's legal defense fund appears on its face to be a violation of both state and county code of ethics gift disclosure requirements.

When writing an advisory opinion, the COE and its staff base the opinion on the facts as presented for its consideration. In his request, Respondent advised that WEPA was the principal of a lobbyist that lobbied Wellington. Based on that information, the COE responded that Respondent could not accept the gift of temporary housing as long as Hirsch remained a WEPA director. However, because there was no reason to do so based on a request for an advisory opinion, COE staff did not verify or investigate whether WEPA is in fact the principal or employer of a lobbyist and the opinion to Respondent was based on the facts he presented as being true and correct. Because it was never established as factual that WEPA employed a lobbyist that lobbied the Village, the issue must now be addressed in this Inquiry.

I checked the county Central Lobbyist Registration database and found that WEPA was not listed as a principal for any registered lobbyist. However, I was able to find that Mat Forrest was a registered lobbyist, and that he was registered to lobby in the Village for Solar Sportsystems. Because Forrest was also on the WEPA board of directors, and at some point listed as its Executive Director, I made contact with him and arranged for an interview at the COE office on January 9, 2012 at 3:30 PM.

- **Interview: Mathew Forest, Executive Director, WEPA**

This particular interview was initially conducted with Mathew Forrest in reference to case #C13-001 (Respondent-Robert Margolis). However the information obtained during this interview is also relevant to this Inquiry.

On Wednesday, January 9, 2013, I interviewed Mathew Forrest, Executive Director of the Wellington Equestrian Preservation Alliance (WEPA) in the COE conference room. This interview was audio recorded, and Forrest was placed under oath for the interview. The interview began at 3:45 PM and concluded at 4:19 PM. Forrest is a registered lobbyist for the Village, and lists Solar Sportsystems, Inc. (Solar Sportsystems) as a Principal. Included among the "legislative interests" listed in his lobbyist registration for Solar Sportsystems is "land development".

Mathew Forrest stated that his employer is Ballard Partners, a governmental and public affairs firm with offices in West Palm Beach and several other Florida locations. He has been employed by Ballard Partners since 2007. Forrest acknowledged that he is a lobbyist by profession and that one of his clients at Ballard Partners is Solar Sportsystems, which is the entity he registered as his Principal when he registered as a lobbyist for the Village in the county's Central lobbyist Registration database.

Forrest advised that Solar Sportsystems is a New York based firm that, to his knowledge, does not have business interests in Wellington, but that it is a privately held company owned by the Jacobs' families, who are landowners and part-time residents of the Village. Forrest also acknowledged that he is the Executive Director of WEPA, but is not compensated for this position. However, he holds this position at the request of Louis Jacobs.

We began to discuss WEPA and his role within that entity. He said that he is a director of WEPA, which is a non-profit Florida Corporation. Forrest stated that WEPA is "strictly a public advocacy group for volunteers looking to advocate for preservation, specifically around the equestrian preserve area of Wellington. It has no requirements for membership, and actually has no members, we have supporters. It brings in no money, we don't solicit donations, we don't sell a product, we simply advocate." I said, "You don't solicit any donations?" Forrest replied, "No. We do get some funding from Lou Jacobs, the President, when he spear headed the re-organization and starting of the advocacy group." I advised that according to the Florida Division of Corporations records,³ WEPA was incorporated on October 1, 2011. Forrest agreed that this sounded correct.

³ Florida Department of State, Division of Corporations website (www.sunbiz.org)

I stated that according to records from the Division of Corporations, including the Articles of Incorporation, the initial officers and directors of WEPA are listed as, Louis Jacobs, Neil Hirsch, Jane Clark and Michael Whitlow. I then asked if all of those individuals still remain as directors of WEPA. He said no, Jane Clark resigned some time ago and Barbara Richardson was added in her place. Forrest re-iterated that WEPA was a volunteer organization and that there is no requirement to join, so they have had people volunteer who are not directors. He also agreed that on June 8, 2012, Neil Hirsch resigned as a director of WEPA by email to Forrest. He was shown a copy of the email and agreed it appeared to be the email he received from Neil Hirsch, as well as his response to Hirsch acknowledging the resignation. He further stated that another director had not been appointed to fill this position and there is no requirement in the corporate by-laws to have a specific number of directors.

I advised Forrest that according to the WEPA website,⁴ Lou Jacobs was listed as the President and Forrest was listed as the executive director. I asked what his duties were as executive director and if he is currently the executive director. Forrest stated, "it's a loose term I guess, I don't know what duties come or go with executive director as opposed to just director." Forrest said that there are no employees on staff for WEPA. However, he described his role with WEPA as "organizational" and that he was responsible for making sure the correct paperwork was filed with the state. Forrest also said that when the organization was "re-grouped" there was, "a lot of footwork was involved" such as obtaining a post office box, helping to design a logo, obtain legal services to draft the corporate documents, making sure that when a director resigns, that they are removed from the Division of Corporations records. He also advised that part of his role was "informational", since the people involved with WEPA are volunteers he keeps them apprised as to what is happening in the Village and is the "primary conduit for information to the group."

I asked Forrest if he is paid or compensated for his role with WEPA. He said, "I am contracted by Solar Sportsystems, I am not compensated in any way by the Wellington Equestrian Preservation Alliance." I asked if he was contracted as a lobbyist, to which he replied, "I am contracted as a governmental affairs person with a variety of duties, mostly as assigned." When I asked Forrest if Solar Sportsystems had any business interests in Wellington, he replied that to his knowledge they own land in and around Wellington. Solar Sportsystems is listed by the PBC Property Appraisers online records as having ownership interest in nine (9) properties, seven (7) of which lie within the Village. Forrest stated he is a consultant for Solar Sportsystems and deals only with its various landholdings. He did not know if it has a business presence in Florida outside of its real property holdings. I asked him if the Jacobs' families were involved with Solar Sportsystems and he stated he was aware they are, but is unaware of their roles within the corporate structure.

We began to discuss WEPA itself and how it came into being, and I asked Forrest what he meant by the term "regrouped" previously in the conversation. He stated that a similar organization known as the Wellington Equestrian Alliance (WEA) existed prior to WEPA. He was not a part of this group, but believed it was also an advocacy group of volunteers that advocated for the preservation of the equestrian areas of Wellington, but could not advise as to the actual structure of that organization. Forrest stated that to his knowledge WEA eventually became "non-functioning"; was not holding meetings or advocating, and was eventually disbanded⁵.

Forrest stated that he became involved with the replacement organization (WEPA) through his work with Solar Sportsystems. Lou Jacobs, who Forrest described as his "primary contact" with Solar Sportsystems, told him about the WEA. Jacobs described the WEA as an organization that used to advocate for preservation of the equestrian preserve area. According to Forrest, Lou Jacobs told him that he wanted Forrest to create a similar organization to advocate for these same issues. Forrest was tasked by Lou Jacobs with organizing WEPA. Forrest was also told that Neil Hirsch and others also wanted to recreate the advocacy group for the purpose of preservation of the equestrian areas of Wellington. Forrest agreed that the role of restarting an advocacy group was assigned to him by Lou Jacobs as part of his duties as a governmental affairs consultant for Solar Sportsystems.

Forrest said the he does a variety of projects for Solar Sportsystems and that he was "asked" by Lou Jacobs to rekindle the advocacy group that eventually became WEPA. He was never paid separately for his work on behalf

⁴ www.wellingtonalliance.com

⁵ Florida Division of Corporations online records list WEA as an inactive non-profit corporation that was incorporated on March 3, 1997, and dissolved on September 28, 2012. The Vice-President of this entity was Neil Hirsch. Jeremy Jacobs is also listed as a director in these records, and the records indicate that he resigned his position as a director of WEA on April 18, 2012.)⁵

of WEPA, but believes that if he had declined, it would not have adversely affected his contract with Solar Sportsystems or his employment with Ballard Partners. He stressed that he was never told by either Lou Jacobs or Brian Ballard (of Ballard partners) that starting WEPA was a condition of his continued employment. I then asked Forrest, "So this was both asked and expected?" He replied that he at no time said he would not assist in this project and at no time did he believe or was told that the contract between Ballard Partners and Solar Sportsystems was conditioned upon him forming WEPA, nor that his continued employment with Ballard Partners was conditioned on developing this project.

While there is real property within the Village listed as being owned by Solar Sportsystems and by members of the Jacobs' families, there is no land listed as being owned by WEPA.⁶ I asked Forrest if he does lobbying activities for WEPA, including appearing before any elected official or Village employee to argue specific issues on behalf of WEPA. Forrest replied, "Difficult to say where my client's interests end, and WEPA's would begin." "I appear before the Council and staff, and I have on numerous times and I've disclosed that I am involved in this advocacy group, and that I also am a paid lobbyist for Solar Sportsystems."

Next, we discussed Forrest's various duties for WEPA. I asked him if one of his duties was to lobby for WEPA. Forrest stated, "I would say no....I don't need WEPA to lobby, I can see the five Council Members and the staff individually as Solar Sportsystems. The Wellington Equestrian Preservation Alliance, the reason that entity exists is for the community outreach of that entity and the organizational structure of finding like minded people with our same preservation model going forward. If WEPA went away tomorrow, it wouldn't stop my client, Solar Sportsystems from asking me to go represent them at the Village of Wellington." I asked Forrest if the other WEPA directors ever direct him to appear before Village officials or staff to argue any specific issue. Forrest replied, "No."

I questioned Forrest as to his relationship with Neil Hirsch. Forrest advised that he only knows Hirsch as a WEPA volunteer, that Hirsch has never donated funds to WEPA, nor is Hirsch paid by WEPA. He also stated that he has never lobbied in any forum for any of Hirsch's local business interests, such as Players Club.

End of the relevant portion of this interview

Section 2-442, *Definitions*, of the Code of Ethics defines the terms "lobbying" and "lobbyist" in the following manner:

Lobbying shall mean seeking to influence a decision through oral or written communication or an attempt to obtain the goodwill of any county commissioner, any member of a local municipal governing body, any mayor or chief executive officer that is not a member of a local municipal governing body, any advisory board member, or any employee with respect to the passage, defeat or modification of any item which may foreseeably be presented for consideration to the advisory board, the board of county commissioners, or the local municipal governing body lobbied as applicable.

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. (Emphasis added)

Based on the activities performed by Forrest, the fact that he is employed by a firm that conducts lobbying activities, that he has both identified himself and registered as a lobbyist for the Village and conducts lobbying activities at the Village of Wellington, Mat Forrest is a lobbyist who lobbies the Village. The fact that he has conducted such activities in meetings with Respondent on at least one occasion after Respondent's election as Village Mayor means that Respondent knew or should have known that Forrest was a lobbyist at that point in time (a point Respondent does not dispute in a subsequent interview). However, although Forrest is registered as a lobbyist for Solar Sportsystems, which has significant real property holdings in the Village, he is not registered as a lobbyist for WEPA and states that he is not compensated for his work with WEPA. Normally, this would lead to a

⁶ PBC Property Appraiser's website, www.pbcgov/papa

conclusion that he is not a lobbyist for WEPA under the Code definition, but a more detailed analysis is necessary as to the relationship between Forrest and WEPA, Solar Sportsystems, and the Jacobs' families.

According to the Florida Department of Corporations website (www.sunbiz.com) Solar Sportsystems is a foreign for-profit corporation that is authorized to conduct business in Florida and has its principal location listed as Buffalo, New York. Solar Sportsystems appears to be a wholly owned subsidiary of Delaware North Companies, Inc. (Delaware North), which is also incorporated in New York. This company is not a public company - its stock shares are not sold or traded on any public stock exchange and is owned and controlled solely by the Jacobs' families. One of the Principals for Delaware North is Lou Jacobs,⁷ who lists his residence as both New York and Wellington, Florida. He is also listed by this website as being, "at the helm of Delaware North," although his father, Jeremy Jacobs, is the Chairman and Chief Executive Officer.

The real property titled to Solar Sportsystems located within the Village contains residential homes occupied or controlled by the Jacobs' families. The main issue presented by the facts is, whether or not Mat Forrest is a lobbyist only for Solar Sportsystems or can be considered to be a lobbyist for Solar Sportsystems and the Jacobs' families, or can reasonably be considered under the circumstances presented as a lobbyist for all three (3) entities/groups, Solar Sportsystems, the Jacobs' Families, and WEPA. It is important to remember in this analysis that Mat Forrest stated under oath that WEPA does not accept donations, but is funded entirely by Lou Jacobs.

Mat Forrest is a lobbyist, working for a firm that employs lobbyists, Ballard Partners. Solar Sportsystems is his client, and the Principal of record listed when he registered as a lobbyist in the Village. The interest of Solar Sportsystems in the Village of Wellington appears to be limited to residential or other property holdings occupied or controlled by the Jacobs' families. Mat Forrest lobbies Village Council and staff on behalf of these residential properties, where ownership, control and/or occupancy seem to merge. WEPA is a not-for-profit corporation and advocacy group, formed by Forrest at the direction of Lou Jacobs, and funded entirely by Jacobs. It raises no donations, and has no other means to support its mission of advocating a position in direct opposition to the Equestrian Village Master Plan. While Forrest states he is a volunteer who receives no payment for being the organizer and most involved member of WEPA, he formed this group at the direction of Lou Jacobs, who he describes as his "main contact" with Solar Sportsystems. Forrest himself does not live in the Village, and has no other clear connection to the Village or its Equestrian Preserve areas.

Based on this information, a strong argument can be made that Forrest is paid to lobby not only for Solar Sportsystems and the Jacobs' families controlled real properties, but on behalf of WEPA as well. This employment would be considered indirect, but the definition of lobbyist found in §2-442 does not speak to whether a person who is "employed and receives payment, or who contracts for economic consideration, for the purpose of lobbying on behalf of a principal" must be paid directly by the employing principal.

It is within the authority of the COE in its role as a quasi-judicial body in considering application of the Code of Ethics gift law to determine whether under the circumstances presented Mat Forrest is a lobbyist for WEPA. If he is, then any prohibitions within §2-444, Gift law, apply to Neil Hirsch's donation to Respondent's Legal Defense Fund, since it is already established that Hirsch was a member of WEPA's board of directors when this donation occurred.

However, if the COE determines that Forrest was a lobbyist for WEPA under the Code of Ethics, and that he lobbied the Village on behalf of WEPA, a second analysis must be performed to determine if Respondent violated the Code by accepting \$2,500 for his legal defense fund from Neil Hirsch on May 17, 2012.

We consider the language of the Code of Ethics that would potentially prohibit such a donation.

Section 2-444(a)(1), *Gift Law*, states:

⁷ According to Delaware North's website (www.delawarenorth.com/Corporate-Executives.aspx) under the heading, "Family Leadership," Jeremy Jacobs is the Chairman and CEO, and his sons, Jerry Jacobs, Jr., Lou Jacobs, and Charlie Jacobs are "Principals" of this company.

No county commissioner, *member of a local governing body, mayor or chief executive* when not a member of the governing body, or employee, or any other person or business entity on his or her behalf, shall knowingly solicit or accept directly or indirectly, any gift with a value of greater than one hundred dollars (\$100) in the aggregate for the calendar year from any person or business entity that the recipient knows, or should know with the exercise of reasonable care, is a vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to the county or municipality as applicable. (Emphasis added)

Section 2-444(c), states in relevant portion:

No county commissioner, *member of a local governing body, mayor or chief executive officer* when not a member of the governing body, or employee, or any other person or business entity on his or her behalf, shall knowingly solicit a gift of any value from any person or business entity that the recipient knows is a vendor, lobbyist or any principal or employer of a lobbyist where the gift is for the personal benefit of the official or employee, another official or employee, or any relative or household member of the official or employee. (Emphasis added)

Section 2-444(d), goes on to state:

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. (Emphasis added)

Based on these code sections, a violation of §2-444(a)(1) requires that an official or employee, “*knows or should know with the exercise of reasonable care*” that a gift solicited or accepted was from a vendor, lobbyist, employer, or principal of a lobbyist that lobbies the official or employee’s governmental entity, in this case the Village of Wellington. Section 2-444(c) appears to require actual knowledge that a gift has been solicited from a vendor or by a lobbyist, employer, or principal of a lobbyist that lobbies the applicable governmental entity.

The donation of \$2,500 by Hirsch to Respondent’s legal defense fund was made May 17, 2012. Respondent requested an advisory opinion asking whether he was prohibited from accepting housing from Hirsch on May 21, 2012. In his request, Respondent stated that he was aware that Hirsch was a board member of a civic organization that does engage in lobbying activities within the Village. Thus, it is highly improbable that Respondent did not know of the relationship of Hirsch to WEPA.

- **Interview: John Greene, Council Person, Village of Wellington**

On February 8, 2013, I conducted an interview with John Greene at the COE office. This interview was audio recorded, and taken under oath. The recorded interview began at 10:58 AM and was concluded at 12:33 PM. Prior to the recorded interview, I discussed with Greene the general areas I wished to cover because they were expansive. I also wished to obtain additional background information, in particular about the Sheriff’s Foundation.

At the beginning of the interview, Council Person Greene identified himself for the record and acknowledged that he was a Council Person for the Village of Wellington. Greene was then placed under oath and acknowledged that he was aware he was under oath. He also acknowledged that he received copy of the complaint and all documents pertaining to this complaint several days prior to the interview and stated that he had the opportunity to review all of the documents. He acknowledged that he understood this interview to be voluntary. We also discussed a concern he had expressed prior to the recorded portion of the interview that he could not comment on any pending litigation issues (the Village is currently involved in litigation with Complainant regarding the Equestrian Village project), and agreed that if we intruded into that area, he could simply chose not to answer because of this litigation. Greene also advised that he spoke with counsel for the Village handling the litigation, and counsel agreed he should not discuss the litigation in this interview.

We then began to discuss the complaint filed on January 9, 2013 by Mark Bellissimo, as Managing Member, Wellington Equestrian Partners (WEP). I asked Greene if he was familiar with Mark Bellissimo. He stated that he knows him very well. I then asked how he knows Bellissimo. Greene advised that Bellissimo is a developer/operator in the Village and they have met to discuss various issues related to the Equestrian Village project, the Palm Beach International Equestrian Center (PBIEC). Greene agreed that the Equestrian Village project is Mark Bellissimo's project.

I referred Greene to page one of the Complaint, where it alleges that "Councilman Greene has corruptly used his power to secure benefits for certain individuals and has accepted valuable gifts in exchange for votes on certain matters before the Village Council. Further, he was offered and accepted prohibited lobbyist gifts, and failed to recuse himself on matters in which he had a conflict of interest." I told Greene that this is the overriding allegation found within this complaint.

I then discussed the "timeline" I previously prepared. I began with May 21, 2012, where Greene asked the COE for an advisory opinion on whether he could use a guest home of a longtime friend, Neil Hirsch, for temporary housing.⁸ Then I asked him to explain this housing issue.

Greene said that he and Neil Hirsch have been very close friends for decades. They spend a lot of time together when Hirsch is in Wellington during the season and Hirsch knows his wife and family very well. Greene stated that Hirsch is someone he confides in about personal issues and who understood the situation going on in his personal life and his need for temporary housing. Hirsch advised that he and his staff would be away for the summer and that if it would help, Greene could use Hirsch's guest house in Palm Beach Polo Club development. I explained to Greene that at the time he submitted his request for an advisory opinion to the COE, he advised COE staff that Hirsch was a director of a non-profit advocacy group called the Wellington Equestrian Preservation Alliance (WEPA), and that he believed at that time that WEPA was the employer or principal of a lobbyist that lobbied the Village. Greene replied that at the time, he was newly elected and really wasn't sure whether WEPA had a lobbyist, but he was aware that Mat Forrest, who served as the Executive Director for WEPA, was a lobbyist. In an abundance of caution, he felt he should seek an opinion from the COE to determine if there was a conflict. He knew Hirsch was an active member of the WEPA board of directors (although he did not provide any financial support for the group), and thought it would be wise to seek the opinion.

I stated to Greene, "So you knew that the Executive Director of WEPA was Mat Forrest and you knew that Mat Forrest was a lobbyist by profession." Greene answered, "Correct." I asked if Greene had any actual knowledge that Forrest was lobbying for WEPA. He stated, "No, I didn't know that." Greene went on to explain, he knew Forrest was employed by Ballard Partners and he knew he was the Executive Director of WEPA from events prior to the election where Forrest would speak and identify himself as the Executive Director of WEPA and he knew Hirsch was a board member of WEPA. The advisory opinion he was given was based on the assumption he made that WEPA was the principal of a lobbyist and the value of the temporary housing was in excess of \$100.

The opinion offered two (2) possible options according to Greene. He could accept the temporary housing and pay Hirsch for the housing at the standard rate of \$44.00 per night⁹ in which case there would be no gift. The second option was Hirsch would have to resign from his position with WEPA prior to Greene accepting the temporary housing. He discussed the opinion with Hirsch who decided to resign from the WEPA board. We discussed that he had accepted this gift of housing from Hirsch, identified the value to be \$2,948 based on the state calculation as to the number of days he remained in the housing (67), and submitted it on his quarterly gift report filed in December 2012. We discussed that he did not begin his residence at this guest home until June 9, 2012 and that Hirsch had notified Mat Forrest of his resignation by email on June 8, 2012. An email response was sent from Forrest to Hirsch acknowledging this resignation this same date. Then I asked Greene whether or not he knew if WEPA employs a lobbyist. He answered, "I don't know, I really don't." Greene also stated that when Mat Forrest speaks in front of council, he always states that he is a lobbyist for Solar Sportsystems.

⁸ RQO 12-045, request submitted to COE staff by email on May 21, 2012, opinion published by COE on June 7, 2012.

⁹ Based on the per diem rate of lodging in a private residence established in §112.3148(7)(b) and §112.061(6)(a), Florida Statutes.

I then addressed a different issue alleged in the complaint. I advised Greene that the complaint states that Bellissimo had two (2) development orders dealing with the Equestrian Village project. The first was R2012-07, and the second was R2012-08. It further alleges that on May 22nd, one day after Greene requested the advisory opinion concerning the temporary housing, there was a status review of these orders and the Council voted to revoke the first of these development orders (R2012-07). I asked if this was correct, to which Greene replied, the statement was correct; however, the item on the agenda was brought before Council by staff, not at the direction of Council.

Greene also said that at that time no decision had been made as to whether or not he would take the offer of temporary residence at Hirsch's guest house, so according to statute he was required to participate in that vote. At that point he was still living in his house and nothing had changed. I said that I was just pointing out that the two matters were one day apart. I asked Greene directly if his vote at the status hearing to revoke the first of the orders (R2012-07) for the Equestrian Village project was based in any way on the receipt of housing from Hirsch. Greene said, "Absolutely not, there was never any discussion one way or the other that if I voted a certain way, that offer for housing would, or would not be still available."

I advised Greene that we would move on in the timeline. We discussed that on June 8th Hirsch resigned from WEPA, on June 9th Greene accepted the temporary housing from Hirsch from June 9th to August 14th. The value of this housing amounted to \$2,948, which was properly reported on Respondent's quarterly gift form. Greene said that Hirsch was not staying at his Wellington home during this entire period. I asked Greene if he spoke with Hirsch during this period. Greene replied that he spoke with Hirsch on a regular basis during this period by telephone and email.

I asked Greene if he discussed Village business with Hirsch. He replied that Hirsch would keep tabs on what was going on in the Village. Hirsch was able to watch the Council meeting via the internet and that he and Hirsch would discuss various projects within the Village. He then stated that it was a very contentious time in Wellington. I asked him if he discussed projects that were coming before the Council with Hirsch and he replied that they would discuss projects in general. I asked if these discussions were done by email and he replied that most were done by telephone. I asked if he would be willing to give me copies of the various email conversations he and Hirsch had after redacting personal discussions. Greene replied that he would be happy to go back through his emails and give me any emails that he felt were relevant. He advised that there are probably very limited emails, but he would be happy to share them with me.

I advised Greene that according to the complaint, on July 10, 2012 there was a second Equestrian Village development order revoked by the Council (R2012-08). I asked why both were not dealt with in the same meeting. Greene stated that they were different items because they were different issues. He believed that one was a master plan issue and the other a comprehensive plan amendment.

We then began to examine specifically the various gifts listed on his quarterly gift form. I started with the listing of a "vacation" from September 22, 2012 to September 24, 2012, valued at \$3,180.39, which was also received from Hirsch. This gift was given after Hirsch had resigned from WEPA. Greene advised that his wife and he went to the Keys for a long weekend with Hirsch and a guest. He agreed that Hirsch paid for the trip. Greene stated that if you look at the history of their friendship this was not "atypical".

Greene stated that because both now live in Wellington, the friendship between them has developed significantly over the past ten (10) years, although prior to that time he had been to Hirsch's home in New York. I asked whether over the past ten (10) years they have been on vacation together before. Greene replied, "Oh, absolutely yes." When I asked for examples Greene stated that going back to the 80's, he has visited Hirsch at his home in the Hamptons and his apartment in New York City, he and his family have flown multiple times on Hirsch's private jet to St. Louis and that Greene is close friends with Hirsch's nephew, which is how they met. Greene went on to state that he has been to each of Hirsch children's bar mitzvahs in Hirsch's private jet. He also stated that each trip was taken before he was ever a public official. When asked, Greene stated that generally Hirsch would pay for these trips as he is wealthy and has always been very generous. Greene stated that he has gone on trips with Hirsch a minimum of a dozen times since he has known him.

Then we discussed the \$450 tickets to the Boys and Girls Club Gala he received from Hirsch on December 1, 2012. Greene stated that Hirsch gave over \$1 million to help construct the club's new building in Wellington (which will be named the Neil S. Hirsch Family Boys and Girls Club). This was their annual gala event and Hirsch was being honored at this event and had a table for ten (10). Hirsch invited his closest friends to the event as guests. This was a public event where anyone could purchase tickets, so Greene stated he used the advertised price of the tickets as the guide to the value of this gift.

I then discussed the November 21, 2012 gift of \$5,000 to Respondent's legal defense fund reported on his December 2012 quarterly gift form from Steven Rapaport. We went through the issues involving the March 2012 Village elections, and the need for him to obtain legal counsel as a defendant in a lawsuit based on the election. He and Village Council candidate Matt Wilhite were originally thought to have lost the election, but a re-count awarded them the Council seats. Bob Margolis won initially, but the re-count showed a much smaller margin of victory. All three (3) candidates were named in lawsuits post-election.

Greene hired John Whittles of Richmond Greer to represent him in this matter. However, he did not have the personal financial means to pay these fees, so he asked the elections commission in Tallahassee how he could fund this litigation without violating election laws. The options he was given were: 1) to maintain his campaign account and continue to accept donations of a maximum of \$500, or 2) he could open a legal defense fund account and accept donations with no maximum limit, which would not be considered campaign contributions, but would be considered reportable gifts under state law. He chose to open a legal defense fund account.

I next asked Greene who Steven Rapaport was. He replied that he is a man Greene has known for many years, and who is a business associate of Neil Hirsch and a part-time resident of Palm Beach. I asked Greene how Rapaport is involved as a business associate with Neil Hirsch. Greene replied they are both involved in a business out of New York known as "R.Z. Capital". I asked what business R.Z. Capital was involved with, and Greene stated he did not exactly know, but he believed they were an investment group.

Then I told Greene that the complaint lists information that the "Player's Club" restaurant is held by a corporation known as "Sperin, Inc." Greene said "I believe that to be true." I also advised that the state lists not only Hirsch as a director of this corporation, but that Steven Rapaport is listed as the Secretary for this corporation. I advised that this relationship gives both Hirsch and Rapaport some financial interest in Player's Club and both of them gave donations to his legal defense fund. The allegation in the complaint was that several of the gifts to Greene were based on his voting in matters related to the Equestrian Village project that would assist in these interests because of the proposed restaurant in the project.

I reminded Greene he was under oath and asked him specifically if he accepted any part of these donations for his legal defense from either Hirsch or Rapaport based on any decisions he has made related to the Equestrian Village project. Greene replied, "Absolutely not." Then I told Greene I understood why Hirsch and Victoria McCullough may support him, which is because they both live in the Village as well as his long standing friendship with Hirsch. However, why would Rapaport, who lives part-time in Palm Beach, make such a donation within a local election? Greene answered that he could only speculate. Greene said that he has known Rapaport for many years, they have had dinner together and played golf together numerous times, Rapaport is fond of Greene's family and was aware of the financial hardship the legal bills created for he and his family, and Rapaport has the financial means to make such a donation. Therefore, Greene asked him to donate.

Then I asked Greene if he accepted these donations based on any vote or any legal duty he would have as an elected official. Greene said, "Absolutely not, there was never any discussion regarding any past, current or future vote on any item that would have been influenced one way or the other for financial support for legal defense." I asked Greene if he speaks to Rapaport as he does to Hirsch about goings on in the Village, since he doesn't live there. Greene stated that Rapaport lives part-time in Palm Beach and when Greene sees him it is generally at Hirsch's house or when they play golf together. I asked Greene how long he has been playing golf with Rapaport and he replied a few years and that they haven't played more than a few times. I asked Greene how Rapaport knows his family since he doesn't see him often and Greene replied that it was from spending time at Neil Hirsch's house. Greene said that he and Steven Rapaport have also been involved in some business entity ideas together.

Greene stated that Hirsch has told him that any business ideas he might have should be sent to Rapaport to review, who Greene advised may be an attorney or at least has a law degree.

We next discussed the two (2) copies of state Form 8B, Voting Conflict, based on Council votes taken by Village Council on August 14, 2012 (marked as Blue Cypress and Global Dressage). The 8B forms signed by Greene on August 28, 2012 were provided by Complainant. The Complainant alleges that these recusals were while Greene was still living at the Hirsch property and Greene himself stated that he was living on this property until August 14th. Greene had advised in our preliminary discussions before the interview that he was given advice by the Village Attorney (Jeff Kurtz) at the time that because he was staying on Hirsch's property, it might be a conflict for him to vote on these items, so he recused himself from these votes. Greene stated that he did not think he had a conflict of interest in these votes, and called COE staff. However, since COE staff would not give an informal, oral opinion on the matter, he decided he should recuse himself based on the Village Attorney's recommendation. The recusal on the Blue Cypress issue concerned property directly adjacent to Neil Hirsch's home inside of Palm Beach Polo, and Kurtz felt because Greene was currently living on the property, there was a potential conflict. Greene stated that he did not agree with this advice, but based on the advice, he did not vote. The second item (Global Dressage, part of the Equestrian Village project) concerned property adjacent to the Player's Club. Greene said that Kurtz advised again that because he was staying on Hirsch's property, he would recommend applying the same analysis, and should recuse himself. Greene said he also did not agree with that analysis, but because he was acting based on the advice of the Village Attorney, he had some protection in following that advice.¹⁰ So he also recused himself from that vote.

Next, I asked Greene if he recused himself from these two votes based on a possible conflict pertaining to living on Neil Hirsch's property, why had he not recused himself from the vote on July 10, 2012, when that vote revoked the Equestrian Village development order (2012-08) at a time when he was living at the guesthouse. I asked why if he felt the conflict existed on August 14th he did not feel this same conflict existed on July 10th. Greene advised that he did not think a conflict existed for any of those votes based on his staying temporarily at Hirsch's guest house. The difference was that Kurtz did not mention a potential conflict prior to the July 10th vote, but he did on August 14th. Even though Greene did not believe there was a conflict, he felt the safest course for him on August 14th was to follow counsel's advice. Greene pointed out that Kurtz was aware of him living on Hirsch's property prior to July 10th.

Then Greene and I discussed the allegation in the Complaint that he used his official position to assist Neil Hirsch in attempting to sell the Player's club to another local restaurant owner, Juan Gando, during a meeting in December 2012 at the Player's Club between Hirsch, Gando and himself. Complainant supplied an affidavit from Juan Gando concerning this meeting which Gando had signed and had notarized on January 9, 2013. Greene and I discussed a brief meeting we had several weeks earlier where he came to the COE office to drop off a copy of a complaint with the state Commission on Ethics made by Mark Bellissimo for my information. At that time, Greene merely wanted me to be aware of this complaint. I briefly reviewed this complaint, and as I was walking him to the office entry, Greene advised me that the meeting alleged in the affidavit between himself, Hirsch and Gando had taken place. I began this discussion asking who Juan Gando was. Greene said that Gando is a restaurant owner in the Village who owns three restaurants. Additionally, Gando previously filed an ethics complaint against Greene over a vote about a conditional use application in September 2012 to extend his hours of operation for one of his restaurants, and whether to allow him to seek an upgraded alcoholic beverage license.¹¹ We briefly discussed this case and the issues presented. Particularly, the extended hours and the alcoholic beverage license, because they are related to the topic of the sale of the Player's Club.

As background, we discussed the fact that the Player's Club operates under a different set of rules regarding their hours of operation and their liquor license due to a settlement agreement between the Player's Club and the Village entered into some years ago. Based on this agreement, the Player's Club is able to operate beyond the hours stated within the Village Code, while all other restaurants in the Village must close earlier if they are located within a certain distance of a residential area. Additionally, the Player's Club operates under a state liquor license

¹⁰ RQO 12-065 Request from Village Attorney asking whether an ongoing conflict of interest existed based upon a friendship between Councilman John Greene and village resident Neil Hirsch.

¹¹ Investigated by COE staff under case C12-012, and dismissed by COE on November 1, 2012.

known as a 4-COP license because of this settlement agreement. A 4-COP-SRX state liquor license, the type of license currently maintained by all other restaurants in the Village, has a state mandated requirement that these restaurants keep a ratio of 51% food sales to 49% liquor sales daily. The 4-COP license has no state requirement for ratio of food to liquor sales, and is the type most bars that are not also restaurants operate under. However, the settlement agreement between Player's Club and the Village allows for the 51% to 49% food to liquor ratio to be on an annual basis and to be monitored by the Village, instead of this ratio being on a daily basis and monitored by the state. Greene then discussed the fact that there are policy issues within the Village code that seem to be in conflict, and that the Council is looking to fix these issues. For example, the Village Code says that on certain days, liquor sales end at 2:00 AM or 3:00 AM (depending on the day of week), but the Code also says that these establishments must close at 11:00 PM. Greene stated the dynamics of the Village have changed, and the Council is looking to address these issues for all businesses in the Village, especially in the area of hours of operation. Greene also mentioned that in January 2008 the Village Council had discussed extending operating hours for all Village businesses, and that the current Council would be revisiting the issue.

After this discussion, we went back to the issue of Greene's involvement in a potential sale of the Player's Club. I discussed Complainant's allegation in the complaint that Greene was involved with this issue twice. The complaint alleges that Greene first discussed a sale of the Player's Club to Bellissimo and later with Gando. Greene stated that he was not aware when the initial discussion of a sale of this business took place between Bellissimo and Hirsch, but he was aware there was some interest for both parties. He also stated that this discussion was prior to his being elected. Greene stated that the Player's Club and the Equestrian Village project sites are located within an area of the Village known as the Equestrian Overlay Zoning District (EZOD), and there are tight land use restrictions within the EZOD for commercial development. The Player's Club property is a small piece carved out of this EZOD, and is not part of the EZOD, but is adjacent to the Equestrian Village property.

Greene said that he believes Bellissimo contacted Hirsch about acquiring this property some time ago. Greene said that he was not involved in the initial discussion in any way. Greene also said that he learned over the summer [of 2012] through conversations with Neil Hirsch that Hirsch was becoming increasingly frustrated that the Player's Club was struggling in terms of revenue. Hirsch was considering several options, including selling the restaurant. Greene said that during one conversation he told Hirsch he thought Mark Bellissimo was interested in buying the Player's Club and when Greene offered to find out for sure if that was in fact true, Hirsch indicated he may still be interested in selling the property and agreed to have Greene speak with Bellissimo about making the purchase. Greene said that at that time he was meeting with Bellissimo on a fairly regular basis concerning the Equestrian Village project. Greene says he told Hirsch that while he would not be involved with the sale or purchase, he would inform Bellissimo of Hirsch's interest to sell when they spoke again. Greene pointed out that because it was off-season, Bellissimo was in Florida and Hirsch was in New York. At one of their meetings, Greene told Bellissimo that he was aware that at one time Bellissimo had been interested in purchasing Player's Club from Hirsch. Then speaking to Bellissimo, he said, "In my conversations with Mr. Hirsch, it might be a good time for you to reach out to him." Greene also stated that he said, "This is between you guys, I have nothing to do with this, it means nothing one way or the other, but if there is interest, I would reach out to Mr. Hirsch." Greene states that the conversation ended at that point. At that time, I clarified that during the regular meetings held between he and Bellissimo he was acting as a Councilman. Greene said, "Correct."

I then asked, "And you're having a discussion with him about the sale of property, of the Player's Club?" Greene stated that it was not his intention to try and facilitate any type of deal. He was aware of the history of Bellissimo's interest in Player's Club, and suggested to Bellissimo that if he was still interested in purchasing Player's Club, he should contact Hirsch. He said that beyond that suggestion, he had nothing to do with it. I asked Greene if Hirsch requested him to assist in the sale of Player's Club to Bellissimo, or if he was promised any payment or portion of the sale proceeds for efforts to assist in the sale. Greene stated, "Absolutely not." He stated that he is not involved in any sale, was never offered or agreed to any compensation by Hirsch, and merely noticed Bellissimo of the possibility that the property might be for sale as a follow-up to a previous conversation between Hirsch and Bellissimo, and that he should contact Hirsch if still interested. He also stated that he was aware of the consequences of involving himself in any "secret arrangement" being made, and did not do so. There was never any discussion of any "reward" if this sale was to go through. Greene disputes the allegation that he ever aggressively attempted to make this sale happen, and had many subsequent meetings with Bellissimo, but never broached this issue with him again. Greene stated that Bellissimo brought the sale issue back into discussions a

few times after, and he consistently reminded Bellissimo that the sale issue was strictly between Bellissimo and Hirsch.

I then changed the topic of discussion to the meeting with Juan Gando. This meeting occurred at a time when Hirsch was back in town. Greene stated he is aware now that the Jacobs' families made an offer on the Player's Club property, and he believed there may have been other discussions from some other restaurant operators. Greene said he was never involved in any of these discussions, and never took any action that would have benefitted Hirsch as related to these discussions. Greene advised that sometime in late November or early December [2012], Hirsch received a call from a real estate broker (he did not remember her name), and that he was aware there was a significant written offer for the Player's Club following a discussion with this broker (possibly \$8 to \$10 million). Greene also believed that Bellissimo had made a verbal offer as well. The broker asked Hirsch to take a meeting with her client. Hirsch called Greene later and told him that the client was Juan Gando. Hirsch met with Gando, the realtor and a group of investors from Miami.

Greene stated he received a telephone call from Hirsch asking to meet with him and Juan Gando. Greene stated he met with Hirsch and Gando at the Player's Club. It was the first time he had spoken to Gando since the ethics complaint Gando filed in September 2012. Greene said that Gando apologized for that complaint and they shook hands. Gando then told Greene that he was interested in purchasing the Player's Club but was concerned about the hours of operation. Greene stated that he told Gando that the Player's Club operated under a settlement agreement, and he did not know if those extended hours transferred with the sale of the property. But he also advised Gando that he was aware that in January 2008 the Village Council had considered extended hours for all Village businesses. He stated that he told Gando this issue was being discussed by Council and the Zoning Board (PAZB), and that he believed the current operating hours are not fair to local businesses, and he believed the Village needed to treat businesses fairly. He also believed while he did not offer any affirmation of any vote on the issue, he did indicate that he believed that if the Player's Club could operate with extended hours, other businesses should be able to as well. Greene stated that he should reach out to every other Council Person for the same discussion if he wanted to have a "comfort level" as to where the Council might be going in terms of hours of operation for all businesses in the Village. However, Greene said he spoke with Gando about the Sunshine Law and told Gando that he could not speak to the other Council Members and advise them of their conversations or conversations with other Council members, nor could he use anyone to go between Council Members to find out how each one would vote on extended hours. Greene also stated that the allegation that Hirsch told Gando that he could get him the votes on this issue is false, and never took place, or at least never made in front of Greene. Greene does not believe Hirsch would have ever said this to Gando. Greene left after about 20 minutes, but Hirsch and Gando remained. Greene also noted that the Player's Club was closed during this meeting, so it took place in Hirsch's office.

Greene then described a second meeting as stated in the complaint that took place later that evening at The Seahorse Restaurant, which opened recently in the village and was owned by Gando. Hirsch called and told Greene that Gando had invited them both to this restaurant for dinner. At about 7:00 PM, Greene and Hirsch went to The Seahorse Restaurant. Greene stated that Gando did not eat with them, although he did greet them upon their arrival, and seated them at a table. Hirsch and Greene had dinner. He said Gando sat with them briefly, but never discussed the extended hours issue again. Greene said that Gando later gave them a tour of the restaurant.

I reminded Greene of the brief meeting we had a few weeks earlier when he dropped off the state complaint to my office. I reminded him about the conversation we had on the way out of that meeting, where I had asked him why he met with Gando and Hirsch when he knew the purpose of the meeting was a discussion about the sale of the restaurant. I also reminded him that when I posed that question to him at that time, his answer was, "I meet with all applicants." Greene explained that he was simply meeting with two restaurant owners over an issue that was hot in the community, hours of operation. I asked if Gando was an "applicant" to any pending Council business, and Greene replied there was nothing before the Council at that time.

I discussed the fact that he and Neil Hirsch are good friends and have been for 30 years. Hirsch and Greene go on vacation together, Hirsch contributed to his legal defense, and gave him temporary housing at no cost. He was aware that Hirsch was an owner of the Player's Club and that he was interested in selling Player's Club. Knowing

all of that, I asked Greene why he would bring up the issue of this sale to Bellissimo in a meeting where he was acting as a Council Person. Further, I asked him why he would attend a meeting between Gando and Hirsch about the sale of the Player's Club, when he is known to be a Council Person by both parties, and enter into a discussion of hours of operation and his opinion that he felt the hours should be changed, knowing that this was an issue the potential buyer of the restaurant was concerned about? Greene stated that the way he looks at it, he has no financial gain one way or the other. He looks at his position within the community as a problem solver for some of the contentious issues that are in the Village. He reiterated that he does not have a financial gain one way or the other, and that there was no *quid pro quo*, it's not a matter of he will vote for something if someone does something for him. He did admit that based on the various issues of gifts, and the timing of gifts and votes, the perception was bad. But also insisted from his perspective he had nothing to gain financially. I told Greene that I agreed that he probably has no direct financial gain from the sale of the Player's Club, but pointed out that he accepted several thousand dollars of gifts from Hirsch, and the \$5,000 donation from Rapapport, people who do have a financial interest in Player's Club.

Then I asked Greene directly whether any of the funds or other gifts he accepted from Neil Hirsch, Steven Rapapport or even Victoria McCullough were based on the fact that he would vote a certain way on issues regarding the Equestrian Village project that came before the Village Council. Greene replied, "Absolutely not, one hundred percent." After Greene answered, I asked him again why he would involve himself in the sale of the Player's Club when two of the owners have given him substantial personal gifts worth thousands of dollars. Furthermore, couldn't he see a conflict in those actions or at least a perception of a conflict? Greene stated that he did not recognize that this would be a conflict. He also advised that he was not aware when he took the funds from Steven Rapapport that Rapapport was an officer of a legal entity that controlled the Player's Club. I asked if he knew Rapapport had an ownership interest in the Player's Club, to which he answered, "No, I did not know." I questioned that since he has played golf with Rapapport, attended functions with him, discussed business with him, yet Hirsch never mentioned this fact to you. Greene said, "No, never once. I knew they were partners with R.Z. Capital." I said, "You did know Neil owned Player's Club, or at least was the managing partner.....you didn't know who his partners were?" To which Greene replied, "No, never once." Greene also related that Steven Rapapport also never advised he had an ownership interest, and that Hirsch and Rapapport never discussed this issue in front of him. Greene also advised he has dined with Rapapport at the Player's Club and Rapapport never mentioned that he had some interest in the restaurant. There was a long discussion concerning the relationship between Greene and Hirsch, and Greene and Rapapport, but Greene insisted that he had no knowledge that Rapapport was involved in the Player's Club and that he does not get involved with their business dealings. His feeling on the meeting with Hirsch and Gando was that he did not facilitate any negotiations of the sale of the Player's Club, and because it involved issues that would concern any business person in the Village, hours of operation, he would take that same meeting today. He also pointed out that Gando owns three (3) other restaurants in the Village. He also states he has met with the owner of Jo Jo's Restaurant regarding this issue, whose name he did not remember.

Greene said that having a point of view throughout a campaign, and people expecting you to stay true to that point of view where you have advocated that you do not support a development like the Equestrian Village, is not the same as a *quid pro quo* for specific votes on that project, which he never did for anyone. He ran for election on a platform that he was against the Equestrian Village project. If he were to accept gifts from Mark Bellissimo, and later stated that he had re-thought his position on that issue, then there would be a real concern. As of this point, he has always held the same views about that project, and any gifts from people who share that view would be to influence views that he already held.

Greene's final statement was that he felt it was extremely suspicious that on November 13th, prior to a Council meeting, Mark Bellissimo was in the Council's conference room lobbying hard for votes in support of a proposed settlement agreement that would remove the revocation of the Master Plan, and if Greene did not support that agreement, Bellissimo was adamant in what Greene described as "a very threatening way" that he would do exactly what he is doing. Greene went on to say, "He has come after me in every way you can, using the media, using and abusing in my opinion the office of the ethics commission here in the county, at the state level, he's making allegations that are absolutely not true. He has now got Juan Gando involved signing affidavits that are false and malicious, with in my opinion, no other objective than to defame my character." He also advised that

Gando is now been given a substantial contract for food services by PBIEC [Palm Beach International Equestrian Club), owned by Mark Bellissimo in this concerted effort against him.

The interview was ended at 12:33 PM.

After completing the interview with Respondent, John Greene, I conducted two (2) additional interviews in an attempt to reach the initial determination of whether or not legal sufficiency exists to open a preliminary investigation into this complaint.

- **Interview: Neil S. Hirsch, Owner, Player's Club Restaurant**

On March 4, 2013, I interviewed Neil Hirsch, owner of the Player's Club Restaurant, at the COE office. This interview was recorded, and conducted under oath. The interview began at 12:10 PM, and concluded at 1:09 PM.

We began the interview with a discussion of Neil Hirsch's relationship with Respondent. Hirsch advised that he has known Respondent for approximately thirty (30) years. Respondent "grew-up and went to school" with Hirsch's nephew. Hirsch said he met Respondent when both lived in St. Louis and he attended many family functions where Respondent was present. When Respondent moved to the Village about ten (10) years ago, they became very close and Hirsch considers Respondent one of his best friends. Hirsch stated that Respondent has never worked for him at any of his companies, and their relationship has always been a personal one. Hirsch advised that he knew Respondent's wife and children and they would often socialize and celebrated many holidays together. They would also take vacations together on occasion, with Hirsch often paying for the trips because he was more financially well off. Hirsch estimated they had been on vacation together "maybe a half-a-dozen times." He would also often have Respondent and his family accompany him in his private plane when he flew to St. Louis for family events, particularly involving his nephew or his nephew's children.

Then I began to specifically discuss a gift listed on Respondent's Quarterly Gift Disclosure Form for December 2012, in which he reported that Hirsch had given him a "vacation" from September 22, 2012 to September 24, 2012 valued at \$3,180. Hirsch stated that he invited Respondent and his wife to join him and a guest for a weekend in the Keys. I asked again if he and Respondent spent vacations together often. Hirsch answered that they would do so occasionally. Hirsch advised that his guest had time off from school and they decided to spend a weekend in the Keys (Little Palm Island). He invited Respondent and his wife to join them. I asked Hirsch if Respondent's children were grown. He replied, "One is in his first year of college, another is in her second year of high school, and the third is still in middle school." (The specific way in which he answered this question, which he likely would not have anticipated being asked, verified for me that Hirsch did know Respondent's family well.) Hirsch agreed that because he has been successful in business, and Respondent is a working man raising a family, it was not unusual for Hirsch to pay when he invited Respondent and his family to accompany him on trips to St. Louis or even vacations. I asked if Hirsch asks for anything from Respondent in return for paying for trips or vacations. He replied, "No I don't." Then I asked him if he ever asked for anything in return prior to Respondent becoming a Village Councilman, such as doing work on the side. Hirsch responded, "No." I asked if he asked for anything in return since Respondent became a Councilman. Hirsch again responded, "No."

Then we briefly discussed the temporary housing Hirsch had given respondent at his guest house in the Polo Club from June 9, 2012 to August 14, 2012. According to Respondent's Quarterly Gift Disclosure Form, the estimated value of this housing was \$2,948.¹² Based on the information given by Respondent in his request for advisory opinion RQO 12-045, and information gleaned from my interview with Respondent who advised that he and Hirsch were very close personal friends, I was already aware of the circumstances of this gift. I asked Hirsch if he asked Respondent for anything in return for this temporary housing. Hirsch replied, "No." Then I asked him if this gift of temporary housing was based on the fact that Respondent was a Village Councilman, to which he replied, "No", it was based on their personal friendship.

¹² This amount was based on the per diem rate of \$44 per day as found in §112.061(6)(a), Florida Statutes. This was the method recommended to Respondent by the COE in RQO 12-045 to estimate the value of the temporary housing.

Next we discussed another entry on Respondent's December 2012 Quarterly Gift Disclosure Form, which lists a gift from Hirsch of two (2) tickets to the Boys and Girls Club Gala, valued at \$450. Hirsch advised he was being honored at this event for a significant donation to the Club, and that he invited Respondent and his wife to share this moment because of their close personal friendship. Hirsch advised there was no other reason for the tickets being given to Respondent, and that Respondent was not a speaker at the event.

Then I asked Hirsch how he knew Steven Rapapport and about their relationship. Hirsch said that Rapapport is a part-time resident of Palm Beach, and a personal friend and business partner. They have been working together since the late 1970's in various business dealings. Hirsch said that Rapapport originally came to work for a company he owned in the 1970's as an executive vice president dealing with bonds and securities. His company was sold in 1990, but he and Rapapport remain in business together to this day, mostly dealing with real estate investments and some venture capital investments through a company called R.Z. Capital (Hirsch advised that R.Z. stands for Rapapport Zimmerman, another business partner of theirs). We discussed two (2) Florida corporations in which Hirsch is listed as an officer, Sperin, Inc. and Sperin, LLC. Hirsch said that it is through these entities that he owns the Player's Club Restaurant. Hirsch said that one of the companies owns the restaurant, while the other owns the land the restaurant sits on. Hirsch told me that he was originally a small investor in the Player's Club, and got involved to help open a high end restaurant in the Village because he was tired of having to drive to Palm Beach to go to a good restaurant. The main investors actually named the controlling corporation Sperin, and he later bought out those investors. I pointed out that both Rapapport and Alan Zimmerman were listed as officers in Sperin, Inc. Hirsch stated that in all of the corporations he forms, both Rapapport and Zimmerman are listed as officers, with Hirsch as President, Rapapport as Secretary, and Zimmerman as Treasurer. However, Hirsch advised that neither Rapapport nor Zimmerman have an ownership interest in Player's Club, and that he is the sole owner of both the restaurant and the land where it is located. I verified that Rapapport does not receive any profits from the restaurant and has no ownership interest in this business. I asked Hirsch how Rapapport knows Respondent, and he replied, "He knows all of my friends, and has known him basically as long as I have known John, because John, as a kid, came up to New York all the time." I explained to Hirsch that I understood why he may have given a donation to Respondent's legal defense fund, and briefly discussed the perception of two (2) factions that exist in Wellington, and that they are either for or against the building of the Equestrian Village project. I then asked Hirsch why Rapapport, who is a resident of Palm Beach and not Wellington, with no financial interest in the Player's Club Restaurant, would give a \$5,000 donation to Respondent on November 21, 2012 for his legal defense fund. Hirsch explained that he and Rapapport are involved in many things together. He continued that he gives money to Rapapport's charities, and Rapapport gives money to his charities. Also, Rapapport has asked Hirsch to donate to candidates that he supports, and Hirsch has asked Rapapport to donate to candidates he supports. This donation was along the same lines. When I asked if Hirsch asked Rapapport to donate to Respondent's legal defense, Hirsch replied that he believed he informed Rapapport that Respondent had some legal bills outstanding and could use some help. Hirsch also pointed out that Rapapport knows Respondent and had the ability to help him financially.

At this point, I inquired as to whether he asked Victoria McCullough to donate to Respondent. Hirsch replied that he did not believe he spoke with McCullough about that. I asked how he knew McCullough. Hirsch stated he knows her from Wellington, and as known her about fifteen (15) years. I asked if McCullough was, like himself, a person in favor of preservation of the equestrian area. Hirsch replied that she was not a member of the "Alliance" (WEPA), but he has known her as an equestrian for fifteen (15) years. I told Hirsch that McCullough donated \$4,000 to Respondent (and to each of the three candidates with the same re-count election issue). He stated again that he did not remember asking her to donate to Respondent.

I redirected the interview to the issue of the "timing" of the various gifts he made to Respondent. I advised Hirsch that it was on May 21, 2012 that Respondent asked COE staff about the temporary housing. On May 22nd, the next day, Respondent voted at a status review hearing on an issue where the Council revoked a previously approved development order (R2012-07) for the Equestrian Village project based on a platting issue that remained unresolved. Then I asked Hirsch if he knew what that issue involved. Hirsch stated that, as he recalled, they had missed the time limit involving the platting. I asked if he attempted to influence Respondent about this platting issue prior to the vote. Hirsch replied, "No." Then I asked if his offer of temporary housing to Respondent was based how Respondent voted on this issue in any way. Hirsch replied, "No." I asked Hirsch if Respondent would

have voted to allow the extension of this time period, if that vote would have affected this offer of temporary housing to Respondent. Hirsch replied, "No."

I advised Hirsch that during the period of time Respondent was living in his guest house (June 9, 2012 to August 14, 2012), Respondent recused himself twice from votes at Council meetings. On August 14, 2012, Respondent recused himself from a Village Council vote based on the issue (Blue Cypress issue) involving land that abutted the property where Hirsch's home is located. On the same day, Respondent recused himself again from a vote involving another issue (Global Dressage issue) involving land that abuts the Player's Cub Restaurant. Hirsch stated that he believed Respondent did not vote on either of these issues based on advice from the Village Attorney (Jeffrey Kurtz). Then we discussed that a second development order (R2012-08) revoked by Village Council on July 10, 2012 (while Respondent was living at the guest house), which involved the Equestrian Village project. I advised Hirsch that I was aware that he and Respondent remained in communication weekly even though he was not living at the property in the Village at that time as it was "off season". I asked Hirsch if Respondent ever discussed this vote with him, or if he ever offered advice or an opinion to Respondent as to how he should vote on the issue. Hirsch replied, "No, I don't...I don't recall but I don't think so."

We began to discuss the Player's Club and the fact at some point he was looking for possible buyers for the business. Then I asked about the conversations he had with Mark Bellissimo (Complainant) about the possible sale of the business to him. Hirsch stated that the initial discussions between them regarding the Player's Club took place in 2011, before Respondent even considered running for Council. He advised that Bellissimo and Michael Stone had discussions as to whether Hirsch would sell the restaurant. Hirsch said he was offered \$4 million at the time, and informed Bellissimo he was not interested in selling. Hirsch said he would have told Respondent about that during their conversations as friends, but it was before Respondent had considered running for Village Council. Hirsch went on to say that last summer was a particularly tough financial time for the Player's Club and that the restaurant has never made a profit and the business was more of a hobby for him. Hirsch purchased the property to have a nice place to eat in Wellington. Last summer, he began to lose a considerable amount of money on the restaurant and said he probably mentioned to Respondent during one of their many conversations that he was considering selling. Hirsch was in New York during this time and said he was aware that Bellissimo and Respondent met often over development issues. During one conversation Respondent asked Hirsch if he wanted him to mention to Bellissimo that Hirsch was interested in selling the restaurant, and Hirsch told him to go ahead and mention it. I asked Hirsch if Bellissimo ever approached him with another offer after the initial contact. Hirsch stated, "He did." I asked when that new offer was made, and Hirsch stated it was in the fall, after he returned to his home in Wellington.

At that time, Hirsch presented a document from a folder he brought to the interview. The document was entitled, "Purchase and Sale Agreement" and was ten (10) pages in length. Hirsch identified this document as the written offer Bellissimo made in November 2012 for purchase of the Player's Club Restaurant. Page two (2) listed various terms of the agreement, and the purchase price offered of five million, five hundred fifty thousand dollars (\$5,550,000). Hirsch pointed out that the agreement was signed by Bellissimo (page 10), but not by Hirsch since he rejected the offer. Hirsch stated that later Bellissimo verbally increased the offer and went on to say that he also advised the Jacobs' that he was interested in either selling the restaurant or becoming partners at which time the Jacobs' made an offer of six million dollars (\$6,000,000) for the business. Hirsch presented a second Purchase and Sale Agreement that was twelve (12) pages that was also dated November 2012, which listed that offer. Although this document was not signed by either party, the "Purchaser" line on page twelve (12) listed the name Solarsports Systems. He advised he was less interested in that offer because, while in the food business, the Jacobs' were not interested in operating the restaurant, and would have simply closed it or had someone else run it. Hirsch believed the Jacobs' were more interested in the land where the Player's Club was located than the actual business itself. Hirsch provided a third Purchase and Sale Agreement (11 pages) dated December 2012, which he identified as the offer by Juan Gando. This document listed a purchase price for the Player's Club at eight million, seven hundred and fifty thousand dollars (\$8,750,000).

Then we discussed the Gando offer specifically. When I asked Hirsch how the offer was presented to him, he said that he received a telephone call late one evening from Carol Solak, a local realtor. Solak advised Hirsch that she had a buyer who wanted to buy the Player's Club. Hirsch told Solak that he "would want a really big number". When she asked what the number was, Hirsch replied that he wanted ten million dollars (\$10,000,000). She called

back that same night and asked if he could lower the price somewhat so he offered to sell for nine million dollars (\$9,000,000). She called back a third time and asked the absolute lowest amount Hirsch would accept, at which time he told Solak that eight million, seventy hundred fifty thousand dollars (\$8,750,000) was the least amount he would accept. When I asked Hirsch how Solak knew he was interested in selling, Hirsch replied that Wellington is a small town and people talk, but he did not know specifically how she knew. When I asked when the telephone calls were made to him by Solak, he said he believed it was in early December. Solak arranged a meeting at the Player's Club the morning after the calls with Hirsch, Gando, Gando's two (2) partners and her. At that time, Gando and his partners made a verbal offer to purchase the Player's Club of eight million, seven hundred fifty thousand dollars (\$8,750,000).

Since Gando's attorney was not available for the initial meeting and Hirsch's attorney had not reviewed the agreement, the initial written offer was not signed by either Hirsch or Gando. He went on to say that the signed written offer was sent to him later by Gando's attorney, Craig Galle. Additionally, there was some "time pressure" during the negotiations according to Hirsch, because he wanted the sale completed by the end of December to avoid being responsible for 2013 taxes on the property and he was going to be out of state with his family in late December and early January. Sometime after the initial meeting, Hirsch and Gando met again at the Player's Club to discuss the sale. Gando was concerned about the hours of the business, specifically the closing times, and whether he would be able to keep the agreement with the Village for the extended hours. They discussed the issue of extended hours as well as a 4COP type liquor license that Gando had taken before the Council concerning another one of his restaurants where the license was denied and only some extended hours were allowed. Hirsch stated that he was aware that the Council had been discussing establishing longer hours for all businesses in the Village, not just restaurants. Hirsch believed that the agreement with the Village including the 4COP liquor license and the extended hours would transfer to the new owner, but was never investigated by either party. Hirsch told Gando he did not believe the Village would change the closing hours for the Player's Club after a sale, and pointed out that in 2007 the previous Council voted to increase the closing hours on Sunday nights. Additionally, he told Gando he was free to discuss the matter with any of the Village Council Members if he wished.

Hirsch called John Greene and asked him to stop by so that Gando could speak with him to get his thoughts on the issue. The discussion was about closing hours in general, and Hirsch stated that Greene told Gando about the limitations under the Sunshine Laws, and that while Gando could talk to other council members about their feelings on closing hours, he could not relay information from one council member to another. Hirsch advised that Greene left the meeting after a time and it continued with only Hirsch and Gando present. I asked if Hirsch told Gando that he could get two (2) additional votes from council members to keep the extended operating hours for the Player's Club, and Hirsch replied, "I said to him that he could call up, and we could have the same kind of discussion with other council members, I can't say how they are going to vote, no." Hirsch did not remember if Greene was still present when he said that to Gando. He reiterated that he told Gando that as a businessman in the Village, he was welcome to speak to any council member he wished.

Hirsch then discussed that he and Greene were invited by Gando to dinner at the Seahorse Restaurant, which is owned by Gando. Hirsch brought a menu with him that was downloaded from the Seahorse website (www.seahorsefashioncuisine.com) and advised that the total amount of food and drink consumed by he and Greene was valued at approximately \$59, not the \$180 reported by Gando. On this menu, he listed the items he and Greene had consumed. Since the total amount reported by Gando (\$180) was also under the \$100 code limit for both reporting and prohibition (\$90 attributed to each diner), I did not believe this was an important issue. However, Hirsch believed that it went to Gando's credibility. I asked him if he knew how much Gando reported the value of the food and drink to be, and he replied that Greene told him Gando reported they had consumed \$180 worth of food and beverage. He also stated that he offered to pay the bill, and Gando stated that they were his guests.

Then we discussed the fact that John Greene is now employed with the Palm Beach County Sheriff's Office Foundation (the Foundation). Hirsch agreed that both he and Victoria McCullough are on the board of directors of the Foundation. I asked Hirsch how Greene knew about the Foundation job being available. Hirsch said that he told Greene that a position may be available. At one of the board meetings it was mentioned that the Foundation was looking for someone who would be a fundraiser for the Foundation, and that the position would not provide benefits in order to keep the cost to the Foundation down. Greene's name came to mind so he told the

Foundation Manager, Bill Gralnick, and may have mentioned to the Foundation Chairman, Rick Seymour, that he knew someone they may want to interview. I asked who made the decision to hire Greene for this position. Hirsch said that it was a board decision, and that each board member voted by email. He was told that there were several other applicants, but Hirsch did not take part in the interviews of any of the candidates. He voted to hire Greene by email. I asked who he had discussions with regarding Greene for this position, and Hirsch stated he discussed it with Bill Gralnick, Rich Seymour and the Sheriff (Ric Bradshaw). He does not believe he discussed his opinion with any other board member except Seymour. Hirsch said he was one of twenty-two (22) people that voted and did not have the ability to give Greene this job.

Hirsch's last statement was that he was tired of the Palm Beach Post reporting that he had done something wrong. However, as I explained to Hirsch, because this is an open complaint, we do not comment to the press. Therefore, any information about the issues under investigation given to the Palm Beach Post must be coming from another source, which we have no control over.

End of interview.

On March 4, 2013, I interviewed Juan Gando at the COE office. Juan Gando was listed as a supporting witness by Complainant, and had submitted a sworn affidavit that was included with the complaint.

- **Interview: Juan Gando, owner of several restaurants in the Village of Wellington**

This interview was recorded and conducted under oath. The interview began at 2:05 PM and was concluded at 2:24 PM.

Juan Gando identified himself for the record, and listed himself as a resident of the Village. He was placed under oath, and said he was aware he was speaking to me under oath. I told Gando I wanted to discuss the affidavit he submitted on January 9, 2013. Because Gando spoke with a heavy Spanish accent, I had a concern that he may not have understood the affidavit he submitted so I asked about his background. Gando said he was born in Cuba, is now a U.S citizen, and has been in the U.S. for about ten (10) years. Because English is a second language for Gando, I asked him if he could read and write in English. After he said yes, I showed him the affidavit submitted with the complaint and verified that it was his signature. He also stated that he read and understood the affidavit before he signed it, and that everything in the affidavit was true. Gando stated that he was part owner and manager of three (3) restaurants located in the Village, Olis, the Grille and the Seahorse. He stated that he has been in the restaurant business since coming to the U.S. and his partners in the restaurant business are Gustavo Chavez (an investor from Miami) and Dustin Parffit (head chef at the three restaurants).

Then we discussed his interest in the sale of the Player's Club, as well as his meeting with Neil Hirsch and John Greene regarding that possible sale. Gando said his interest in purchasing the Player's Club Restaurant was based on his idea of growing his restaurant business. He heard a rumor that the Player's Club was for sale, and contacted a realtor (Carol Solak). Solak contacted Neil Hirsch to begin negotiations. He agreed with Hirsch's description that there was an initial meeting between himself, his partners, Hirsch, and Solak at Player's Club, and sometime later he and Hirsch met in Hirsch's office at the Player's Club. Gando stated that at the second meeting he tried to back out of the initial offer made to Hirsch for the Player's Club (\$8.75 million). Gando said he "really got scared" because he was concerned that he would not be allowed to keep the extended hours that the Player's Club enjoyed, since they were based on an agreement between the Village and Hirsch. He was afraid that once Hirsch was removed, the Village would make the Player's Club close earlier than they were allowed to close under Hirsch. Hirsch then called Greene who met the Gando and Hirsch at Player's Club. Greene told Gando that he would support later operating hours for every business in the Village overall because he believed the current hours should be changed, but he did not support a change in liquor licenses for each establishment to a 4COP license. I clarified that Greene had stated that he would support a 3:00 AM closing time for all restaurants within the Village that wished to remain open that long. This would include the Player's Club as well as Gando's other restaurants if they chose to have these hours.

We discussed the information in Gando's affidavit that alleged Hirsch advised Gando that he would call Mayor Margolis and Council Member Wilhite and obtain similar meetings with them and Gando to discuss the later hours.

Gando stated that he was sure Greene was present when this statement was made. When I asked how he was sure Greene was present, Gando stated that Greene pointed out that as long as the meetings were separate and they didn't discuss what the other council members had said, it was okay to meet any council member to discuss the issue of hours of operation. I asked why he wanted a second meeting at his restaurant (the Seahorse) the same night. He said it was to show Hirsch and Greene the restaurant and let them know he and his partners were ran a serious restaurant business, and because he knew Hirsch and Greene had never been in that restaurant. He took them on a tour of the restaurant, and then Hirsch and Greene ate dinner. I asked him if he was sure that they consumed \$180 worth of food and drink while there. He advised that the Seahorse is very expensive, and he remembered the bill at just over \$179 because he had to void the tab. Gando made it clear that he had invited them, and never expected either to pay for their meal. He also remembered that they drank only iced tea and soda. I asked if Gando still had a copy of the voided tab, but he stated that he did not.

I asked why he completed an affidavit as it was not presented to COE staff by Gando, but by the Complainant. Gando stated that he did not want to be involved; he just wanted to run his restaurants. Gando said that he showed the affidavit to his attorney (Craig Galle) who advised him if he did not sign the affidavit he could be called to testify as a witness. I asked him who prepared the affidavit and he replied, "Mr. Bellissimo." Then he said that he "told Craig Galle what had really happened and that was what he signed." I asked if Galle reviewed the affidavit with him, and he said yes. Gando said he signed the affidavit based on Galle's statement that it might prevent him from having to testify in court. When I asked if he knew that Galle was also Bellissimo's attorney, Gando said "Mr. Galle is the attorney for everybody in Wellington pretty much. He is like Neil Hirsch's attorney, for Mark Bellissimo, but he's so professional." Gando stated that Bellissimo contacted him to obtain the affidavit, and that Bellissimo is a good guy who is trying to grow Wellington, but he gets frustrated sometimes when he gets stopped for no reason.

I went back to the \$8.75 million offer made by Gando for the Player's Club, and he identified the document given to me by Hirsch as the written offer he made. He stated that this document was prepared by Craig Galle and sent to Hirsch. I asked Gando why the sale did not go through, and Gando simply stated he got scared over the hours of operation issue. He also agreed with Hirsch's assessment that because it was in December and needed to be done by January 1st, the deal was too rushed. He said that 8.75 million was a lot of money for him, but that he wanted the restaurant because it was in an amazing location.

End of interview.

- **Documents obtained and submitted to file during the initial inquiry**

1. Copies of RQO 12-012, published by the COE on March 15, 2012 (Ginger Pederson), RQO 12-035 published on June 8, 2012 (John Szerdi), RQO 12-081, published on December 26, 2012 (John Greene), and RQO 12-065, published on October 5, 2012 (Jeffery Kurtz). (11 pages)
2. Copy of lobbyist registration information relating to Mat Forrest and Solar Sportsystems from the PBC Central Lobbyist Registration Site. (3 pages)
3. Copies of corporate information for Sperin, Inc., and Sperin, LLC, from the Florida Division of Corporations website (www.sunbiz.org) (4 pages)
4. Copy of email from Neil Hirsch and response from Mat Forest, dated June 8, 2012, regarding Hirsch's resignation as a director of WEPA (1 page)
5. Copy of information regarding the Palm Beach County Sheriff's Foundation obtained from their website, (www.pbcsheriffsfoundation.com) (2 pages)
6. Copy of proposed Purchase and Sale Agreement for Player's Club Restaurant provided by Neil Hirsch, dated November 2012, listing a purchase price of \$5,550,000, listing the seller as Sperin, LLC and Neil Hirsch, and the buyer as Mark Bellissimo, and signed by Mark Bellissimo. (10 pages)
7. Copy of proposed Purchase and Sale Agreement for Player's Club Restaurant provided by Neil Hirsch, dated November 2012, listing a purchase price of \$6,000,000, listing the seller as Sperin, LLC and Neil Hirsch, and the buyer as Solar Sportsystems, Inc. (unsigned). (15 pages)
8. Copy of proposed Purchase and Sale Agreement for Player's Club Restaurant provided by Neil Hirsch, dated December 2012, listing a purchase price of \$8,750,000, listing the seller as Sperin, LLC and Neil Hirsch, and the buyer as Player's Club Restaurant, LLC (unsigned Gando offer). (11 pages)

- **Conclusion**

Based on the information as listed in this Memorandum of Inquiry, staff recommends to the Executive Director that **LEGAL SUFFICIENCY DOES EXIST** to open a preliminary investigation into portions of this Complaint as listed:

1. That Respondent was a seated Council Person for the Village of Wellington and received a prohibited donation of \$2,500 through a legal defense account on or about May 17, 2012 from Neil Hirsch, a director of an organization (WEPA) that may have employed a lobbyist that lobbied the Village of Wellington at that time. (Listed on page 2 as allegation #2)
2. That Respondent was a seated Council Person for the Village of Wellington and received a prohibited donation of \$5,000 through a legal defense account on or about November 21, 2012 from Steven Rapaport, an officer in Sperin, Inc., a corporation with an ownership interest in the Player's Club Restaurant. The complaint alleges that this donation was based on a *quid pro quo* for Council votes to assist the Player's Club, which based on its location abutting the Equestrian Village site, had a financial interest in the outcome of these votes. (Listed on Page 2 as allegation #3)
3. That the donations of \$4,000 from Victoria McCullough on March 28, 2012, \$2,500 from Neil Hirsch on May 17, 2012, and \$5,000 from Steven Rapaport on November 21, 2012 to Respondent's legal defense account as well the various direct gifts to Respondent by Neil Hirsch (\$2,928 as reported by Respondent on a gift form for temporary housing from June 9, 2012 to August 14, 2012; \$3,148 for a vacation from September 22, 2012 to September 24, 2012; and \$450 in tickets for the Boys and Girls Club Gala on December 1, 2012), were all based on a *quid quo pro* for votes against the Equestrian Village project on May 22, 2012 and July 10, 2012 at Village Council meetings. (Listed on pages 2 & 3 as allegation #4 and allegation #6)
4. That respondent accepted a position with the Palm Beach County Sheriff's Foundation in January, 2013, for which Neil Hirsch and Victoria McCullough both serve on the board of directors, as a *quid pro quo* for votes as a Village Council Member that benefit Hirsch and McCullough's financial interests within the Village. (Listed on page 3 as allegation #7)

Based on the information as listed in this Memorandum of Inquiry, staff recommends to the Executive Director that **LEGAL SUFFICIENCY DOES NOT EXIST** to open a preliminary investigation into portions of this Complaint as listed:

5. That Respondent received a gift to his legal defense account on March 28, 2012 from Victoria McCullough when she was the principal of a lobbyist that lobbied the Village. Respondent was not a member of the Village Council at this time, because he had not "assumed office"¹³ by being sworn into office. He was sworn in on April 10, 2012. Also, Victoria McCullough was not a principal of a lobbyist who lobbied the Village at this time, although she employed attorneys for a civil action she filed against the Village, and these attorneys later registered as lobbyists. (Listed on page 2 as allegation #1)
6. That all donations to Respondent's legal defense account were "suspect" because the election controversy was resolved at the end of March 2012, and he collected some of these donations after that time. However, even though the election issue was settled, the legal bills remained outstanding at that time. (Listed on page 3 as allegation #6)
7. That Respondent's use of his public position and training for this position on an application for employment with the Palm Beach County Sheriff's Foundation, which Complaint alleges is a violation of the misuse of office portion of the Code. The COE has previously held in advisory opinion RQO 12-012

¹³ In RQO-12-035, published by the COE on June 8, 2012, the COE advised in relation to contractual prohibitions with the City of Lake Worth, that a candidate for office was not bound by these prohibitions at that point. However the COE went on to state, "if you are elected to the District 4 Commission seat, *and assume office*, you will then be subject the Code and to the contractual prohibitions." (Emphasis added) Based on this opinion, until an elected candidate actually assumes office, they are not under the jurisdiction of the PBC Code of Ethics.

(Ginger Pederson), that "The use of one's government service in a biographical statement or curriculum vitae as one of a number of employment, social and community accomplishments and awards does not trigger this provision. However, specifically trading on one's official position or using one's official title to promote personal or outside business interests may violate the code." (listed on page 3 as allegation #8)

Therefore it is staff's recommendation that a preliminary investigation should be opened into the legally sufficient allegations (1-4) as listed above.

End of Inquiry report.

Submitted by:



Mark E. Bannon
PB County Commission on Ethics

3/20/2013
Date

Reviewed by:

MCR
(Initials)

3/20/2013
Date

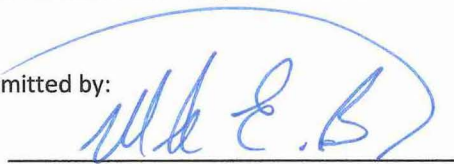
PALM BEACH COUNTY COMMISSION ON ETHICS

SUPPLEMENTAL MEMORANDUM OF INQUIRY

To: Megan Rogers, Interim Executive Director
From: Mark E. Bannon, Senior Investigator
Re: C13-002 – Respondent: John Greene, Council Member, Village of Wellington

The purpose of this Supplemental Memorandum or Inquiry is to correct a scrivener's error on the heading of the original document. The original Memorandum of Inquiry incorrectly listed the case number for this matter as AN 13-002. Because this matter came to the attention of the Commission on Ethics staff based on a sworn complaint, it should have been assigned the case number C13-002. This error is now corrected in the file.

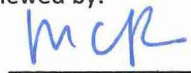
Submitted by:



Mark E. Bannon
PB County Commission on Ethics

4/12/2013
Date

Reviewed by:



(Initials)

4/12/2013
Date

PALM BEACH COUNTY COMMISSION ON ETHICS

MEMORANDUM OF LEGAL SUFFICIENCY

To: Palm Beach County Commission on Ethics
From: Megan Rogers, Interim Executive Director
Re: C13-002– John Greene, Council Member, Village of Wellington

- **Recommendation**

Regarding the Complaint against Respondent, John Greene, Council Member, Village of Wellington, COE staff recommends a finding of **LEGAL SUFFICIENCY** be entered in complaint number C13-002.

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 upon facts which have been sworn to by a material witness or witnesses, and if true would constitute the offenses alleged, relating to a violation occurring after the effective date of the code, and filed with the Ethics Commission within two years of the alleged violation.

- **Background**

This matter came to the attention of COE staff via a sworn complaint filed in January, 2013. The Complainant is Mark Bellissimo of Wellington Equestrian Partners, 14440 Pierson Rd., Wellington, FL. The Respondent listed on this complaint is John Greene, a current Council Member of the Village of Wellington (the Village). The complaint itself is a seven (7) page document including a “statement of facts” that lays out the substance of the complaint, and an additional complaint form and “supplemental statement of facts” that is four (4) pages in length. Also included in this package were several documents presented as evidence of the issues raised within the statement of facts. This complaint was sworn to by Complainant and properly notarized on January 9, 2013. The second complaint form was sworn to and properly notarized on February 13, 2013.

Complainant lists several issues within his statement of facts. As background, Complainant discusses the “Equestrian Village” project, as well as the controversy surrounding Respondent and one (1) Wellington Council Member as well as the current Mayor of Wellington, concerning the local election in 2012, where several lawsuits were filed and a voting re-count was conducted by the PBC Supervisor of Elections. Complainant states that the 2012 Village elections included a slate of three (3) candidates, including Respondent (as a candidate for Village Council), Robert Margolis (as a candidate for Mayor), and Matt Wilhite (as an incumbent Village Council Person running for re-election), who received extensive financial support from a Political Action Committee (the PAC) formed by “the Jacobs family.” The Jacobs’ families, primarily through a privately held business (Solar Sportsystems, Inc.), are land owners within the Village, who oppose the Equestrian Village project.

The general issue raised by this complaint is as follows:

- Respondent received gifts prohibited by the code of ethics. The gifts were given by principals of lobbyists who lobbied the Village, and/or that, “he was receiving this compensation in exchange for his votes on important development matters before the Village of Wellington Council.”

Complainant alleges that Respondent received prohibited gifts from Neil Hirsch, Steven Rapaport and Victoria McCullough by way of donations made by each to Respondent’s Legal Defense Fund. Under the PBC Code of Ethics, gifts to an official or employee of the county, or any municipality within the county may be prohibited under two (2) circumstances.

- Section 2-444(a)(1), *Gift law*, prohibits any official or employee of the county or a municipality from receiving a gift valued in excess of \$100 in the aggregate over the course of the calendar year from a vendor, lobbyist, principal or employer of a lobbyist who sells, leases or lobbies the governmental entity the official or employee serves. Section 2-444(a)(2), prohibits vendors, lobbyists, principals or employers

of lobbyists from giving a gift in excess of \$100 in the aggregate over the course of a calendar year to an employee or official of a government entity they sell, lease or lobby.

- Section 2-444(e) prohibits any person or entity from offering, giving or agreeing to give an official or employee a gift and also prohibits employees and officials from accepting or agreeing to accept a gift from a person or entity, because of:
 - An official public action taken or to be taken, or which could be taken;
 - A legal duty performed or to be performed, or which could be performed, or;
 - A legal duty violated or to be violated, or which could be violated by any official or employee.

Complainant states that both prohibitions were violated by the donations to Respondent of \$2,500 by Neil Hirsch and \$4,000 by Victoria McCullough because they were both principals of lobbyists at the time of these donations, and that the donations were given as an improper *quid pro quo* to influence Respondent's votes against the Equestrian Village project. Complainant also alleges that the \$5,000 donation made by Steven Rapaport to this fund was also prohibited because it was also given as an improper *quid pro quo* to influence Respondent's votes against the Equestrian Village project.

Further, Complainant alleges that gifts provided by Neil Hirsch to Respondent on several occasions, including \$2,948 in temporary housing at the guest house of his Wellington home (from June 9, 2012 through August 14, 2012), a vacation weekend paid for by Hirsch and valued at \$3,180 (from September 22, 2012 through September 24, 2012), and two (2) complementary tickets to a Boys and Girls Club Gala valued at \$450 (for an event taking place on December 1, 2012), were all given to Respondent by Hirsch as an improper *quid pro quo* to influence Respondent's votes against the Equestrian Village project.

- **Analysis**

As a Council Member of the Village, Respondent is subject to the provisions of the revised Palm Beach County Code of Ethics (the Code), as of June 1, 2011, when all municipalities came under the jurisdiction of the COE.

The following section of the Palm Beach County Code of Ethics is relevant to this inquiry.

Sec. 2-444(a) (1) No county commissioner, member of a local governing body, mayor or chief executive when not a member of the governing body, or employee, or any other person or business entity on his or her behalf, shall knowingly solicit or accept directly or indirectly, any gift with a value of greater than one hundred dollars (\$100) in the aggregate for the calendar year from any person or business entity that the recipient knows, or should know with the exercise of reasonable care, is a vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to the county or municipality as applicable.

Sec. 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.

Due to a contentious Village election, including a recount, Respondent incurred legal bills and formed a legal defense fund to offset these expenditures. State law permits the formation of such an entity. However, donations are not considered campaign contributions and are not limited by campaign laws. Donations are considered gifts subject to state and county prohibitions, limitations and reporting requirements. Respondent received a gift valued at \$2,500, received on May 17, 2012, from Hirsch for his legal defense fund. Complainant alleges that as of May 17, 2012, when Neil Hirsch gave the \$2,500 gift to Respondent, that Hirsch was a member of the board of directors of an organization that employed a lobbyist who lobbied the Village. These facts, if true, would constitute a violation of the Palm Beach County Code of Ethics.

Complainant further alleges that Respondent received a prohibited \$4,000 gift from a principal of a lobbyist, Victoria McCullough. Complainant alleges that at the time of this donation, Victoria McCullough was the principal of a lobbyist, although this information was previously investigated by COE staff under case #AN 12-024, and found to be incorrect.

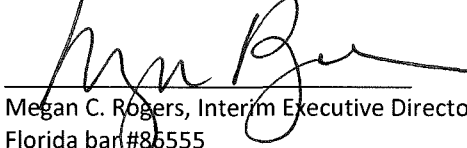
Complainant charges that in addition to violating §2-444(a), accepting a gift in excess of \$100 from a vendor, principal or employer of a lobbyist who sells, leases, or lobbies the Village, Respondent accepted these donation to his legal defense fund from Neil Hirsch and Victoria McCullough, as well as an additional \$5,000 donation to his this fund from Steven Rapaport, in exchange for votes cast in his official capacity as Council Member at Village Council meetings related to the Equestrian Village Project. These facts, if true, would constitute a violation of the Code.

Lastly, Complainant alleges that these donations to Respondent's legal defense fund, and well as the gifts by Neil Hirsch of temporary housing valued at \$2,948, a weekend vacation valued at \$3,180 and event tickets valued at \$450, were also given in exchange for votes cast in Respondent's official capacity as Council Member at Village Council meetings related to the Equestrian Village Project. These facts, if true, would also constitute a violation of the Code.

- **Conclusion**

The sworn testimony of material witnesses as well as documentary evidence obtained during Inquiry does allege sufficient facts that if true would constitute a violation of the Palm Beach County Code of Ethics. Therefore, there is **LEGAL SUFFICIENCY** to open a formal investigation into this matter.

BY:


Megan C. Rogers, Interim Executive Director
Florida bar #86555
Commission on Ethics

7/1/2013
Date

PALM BEACH COUNTY COMMISSION ON ETHICS

AMENDED MEMORANDUM OF LEGAL SUFFICIENCY

To: Palm Beach County Commission on Ethics
From: Megan Rogers, Interim Executive Director
Re: C13-002– John Greene, Council Member, Village of Wellington

- **Recommendation**

Regarding the Complaint against Respondent, John Greene, Council Member, Village of Wellington, COE staff recommends a finding of **LEGAL SUFFICIENCY** be entered in complaint number C13-002.

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 upon facts which have been sworn to by a material witness or witnesses, and if true would constitute the offenses alleged, relating to a violation occurring after the effective date of the code, and filed with the Ethics Commission within two years of the alleged violation.

- **Background**

This matter came to the attention of COE staff via a sworn complaint filed in January, 2013. The Complainant is Mark Bellissimo of Wellington Equestrian Partners, 14440 Pierson Rd., Wellington, FL. The Respondent listed on this complaint is John Greene, a current Council Member of the Village of Wellington (the Village). The complaint itself is a seven (7) page document including a “statement of facts” that lays out the substance of the complaint, and an additional complaint form and “supplemental statement of facts” that is four (4) pages in length. Also included in this package were several documents presented as evidence of the issues raised within the statement of facts. This complaint was sworn to by Complainant and properly notarized on January 9, 2013. The second complaint form was sworn to and properly notarized on February 13, 2013.

Complainant lists several issues within his statement of facts. As background, Complainant discusses the “Equestrian Village” project, as well as the controversy surrounding Respondent and one (1) Wellington Council Member as well as the current Mayor of Wellington, concerning the local election in 2012, where several lawsuits were filed and a voting re-count was conducted by the PBC Supervisor of Elections. Complainant states that the 2012 Village elections included a slate of three (3) candidates, including Respondent (as a candidate for Village Council), Robert Margolis (as a candidate for Mayor), and Matt Wilhite (as an incumbent Village Council Person running for re-election), who received extensive financial support from a Political Action Committee (the PAC) formed by “the Jacobs family.” The Jacobs’ families, primarily through a privately held business (Solar Sportsystems, Inc.), are land owners within the Village, who oppose the Equestrian Village project.

The general issue raised by this complaint is as follows:

- Respondent received gifts prohibited by the code of ethics because they were given in exchange for votes on important development matters before the Village of Wellington Council. “

Complainant alleges that Respondent received gifts from Neil Hirsch, Steven Rapapport and Victoria McCullough by way of donations made by each to Respondent’s Legal Defense Fund. Under the PBC Code of Ethics, gifts to an official or employee of the county, or any municipality within the county may be prohibited under two (2) circumstances.

- Section 2-444(a)(1), *Gift law*, prohibits any official or employee of the county or a municipality from receiving a gift valued in excess of \$100 in the aggregate over the course of the calendar year from a vendor, lobbyist, principal or employer of a lobbyist who sells, leases or lobbies the governmental entity the official or employee serves. Section 2-444(a)(2), prohibits vendors, lobbyists, principals or employers

of lobbyists from giving a gift in excess of \$100 in the aggregate over the course of a calendar year to an employee or official of a government entity they sell, lease or lobby.

- Section 2-444(e) prohibits any person or entity from offering, giving or agreeing to give an official or employee a gift and also prohibits employees and officials from accepting or agreeing to accept a gift from a person or entity, because of:
 - An official public action taken or to be taken, or which could be taken;
 - A legal duty performed or to be performed, or which could be performed, or;
 - A legal duty violated or to be violated, or which could be violated by any official or employee.

Complainant states that both prohibitions were violated by the donations to Respondent of \$2,500 by Neil Hirsch and \$4,000 by Victoria McCullough because they were both principals of lobbyists at the time of these donations, and that the donations were given as an improper *quid pro quo* to influence Respondent's votes against the Equestrian Village project. Complainant also alleges that the \$5,000 donation made by Steven Rapaport to this fund was also prohibited because it was also given as an improper *quid pro quo* to influence Respondent's votes against the Equestrian Village project. Sworn testimony and documents later provided by Respondent show that Hirsch's donation was in the amount of \$5,000 and made prior to Respondent assuming office, therefore this donation does not violate Section 2-44(a)(1) and Section 2-444(a)(2) of the code, however there remains legal sufficiency to believe it may violate Section 2-444(e).

Further, Complainant alleges that gifts provided by Neil Hirsch to Respondent on several occasions, including \$2,948 in temporary housing at the guest house of his Wellington home (from June 9, 2012 through August 14, 2012), a vacation weekend paid for by Hirsch and valued at \$3,180 (from September 22, 2012 through September 24, 2012), and two (2) complementary tickets to a Boys and Girls Club Gala valued at \$450 (for an event taking place on December 1, 2012), were all given to Respondent by Hirsch as an improper *quid pro quo* to influence Respondent's votes against the Equestrian Village project.

- **Analysis**

As a Council Member of the Village, Respondent is subject to the provisions of the revised Palm Beach County Code of Ethics (the Code), as of June 1, 2011, when all municipalities came under the jurisdiction of the COE.

The following section of the Palm Beach County Code of Ethics is relevant to this inquiry.

Sec. 2-444(a) (1) No county commissioner, member of a local governing body, mayor or chief executive when not a member of the governing body, or employee, or any other person or business entity on his or her behalf, shall knowingly solicit or accept directly or indirectly, any gift with a value of greater than one hundred dollars (\$100) in the aggregate for the calendar year from any person or business entity that the recipient knows, or should know with the exercise of reasonable care, is a vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to the county or municipality as applicable.

Sec. 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.

Due to a contentious Village election, including a recount, Respondent incurred legal bills and formed a legal defense fund to offset these expenditures. State law permits the formation of such an entity. However, donations are not considered campaign contributions and are not limited by campaign laws. Donations are considered gifts subject to state and county prohibitions, limitations and reporting requirements.

Complainant alleges that Respondent received a prohibited \$4,000 gift from a principal of a lobbyist, Victoria McCullough. Complainant alleges that at the time of this donation, Victoria McCullough was the principal of a lobbyist, although this information was previously investigated by COE staff under case #AN 12-024, and found to be incorrect.

Complainant charges that in addition to violating §2-444(a), accepting a gift in excess of \$100 from a vendor, principal or employer of a lobbyist who sells, leases, or lobbies the Village, Respondent accepted donations to his legal defense fund from Neil Hirsch and Victoria McCullough, as well as an additional \$5,000 donation to his this fund from Steven Rapaport, in exchange for votes cast in his official capacity as Council Member at Village Council meetings related to the Equestrian Village Project. These facts, if true, would constitute a violation of the Code.

Lastly, Complainant alleges that these donations to Respondent's legal defense fund, and well as the gifts by Neil Hirsch of temporary housing valued at \$2,948, a weekend vacation valued at \$3,180 and event tickets valued at \$450, were also given in exchange for votes cast in Respondent's official capacity as Council Member at Village Council meetings related to the Equestrian Village Project. These facts, if true, would also constitute a violation of the Code.

- **Conclusion**

The sworn testimony of material witnesses as well as documentary evidence obtained during Inquiry does allege sufficient facts that if true would constitute a violation of the Palm Beach County Code of Ethics. Therefore, there is **LEGAL SUFFICIENCY** to open a formal investigation into this matter.

BY:


Megan C. Rogers, Interim Executive Director
Florida bar #86555
Commission on Ethics

4/12/2013
Date

MEMORANDUM OF INVESTIGATION

To: Megan Rogers, Interim Executive Director
From: Mark E. Bannon, Senior Investigator
Re: C13-002 – Respondent: John Greene, Council Member, Village of Wellington

- **Background**

This matter came to the attention of COE staff via a sworn complaint filed in January, 2013. The Complainant is Mark Bellissimo of Wellington Equestrian Partners, 14440 Pierson Rd., Wellington, FL. The Respondent listed on the complaint is John Greene, current Council Member of the Village of Wellington (the Village). The complaint itself is a seven (7) page document including a “statement of facts” that explains the substance of the complaint. In addition, Complainant filed a supplemental complaint. Also included in this package were several documents presented as evidence of the issues raised within the statement of facts. This complaint was sworn to by Complainant and properly notarized on January 9, 2013.

Complainant lists several issues within his statement of facts. As background, Complainant discusses the “Equestrian Village” project, as well as the controversy surrounding Respondent and two (2) other local candidates for Village office concerning the local election in 2012, where several lawsuits were filed and a voting re-count was conducted by the PBC Supervisor of Elections. Complainant states that the 2012 Village elections included a slate of three (3) candidates, including Respondent (as a candidate for Village Council), Robert Margolis (as a candidate for Village Mayor), and Matt Wilhite (as an incumbent Village Council Person running for re-election), who received extensive financial support from a Political Action Committee (the PAC) formed by the Jacobs families. The Jacobs families, primarily through a privately held business (Solar Sportsystems, Inc.), are land owners within the Village, who oppose the Equestrian Village project. The Jacobs’ properties are in close proximity to the Equestrian Village project site. Solar Sportsystems, Inc. is listed by the PBC Property Appraisers online records¹ as having ownership interest in nine (9) properties, seven (7) of which lie within the Village. At least two (2) other residential properties are registered as belonging to members of the Jacobs families directly.

The initial Memorandum of Inquiry as well as all evidence submitted to file during that inquiry are incorporated by reference into this investigation, and into this Memorandum of Investigation.

As discussed in the initial Memorandum of Inquiry, the overriding issue raised by this complaint is that Respondent received multiple gifts prohibited by the Code of Ethics (the Code), from principals of lobbyists who lobbied the Village and/or that Respondent “received this compensation in exchange for his votes on important development matters before the Village of Wellington Council”.

Regarding the more specific allegations as listed in the complaint, after an initial inquiry, the following specific allegations were found to be legally sufficient to open a preliminary investigation:

1. That Respondent was a Council Person for the Village of Wellington and received a prohibited donation of \$2,500 through a legal defense account on or about May 17, 2012 from Neil Hirsch, a director of an organization (WEPA) that may have employed a lobbyist that lobbied the Village of Wellington at that time. As will be discussed more fully later in this Memorandum of Investigation, the actual amount donated to Respondent by Neil Hirsch for his legal defense campaign fund was \$5,000, not \$2,500, and that this donation was deposited into the legal defense fund account on March 23, 2012, not May 17, 2012. While Neil Hirsch was a board member of WEPA at this time, Respondent was not yet sworn into office, making this donation neither prohibited nor reportable as a gift under the Code, so long as it was not given for an improper purpose.
2. That Respondent was a seated Council Person for the Village of Wellington and received a prohibited donation of \$5,000 through his legal defense campaign account on or about November 21, 2012 from

¹ Online records for the PBC Property Appraisers Office, accessed through their website (www.pbcgov.org/papa)

Steven Rapaport, an officer in Sperin, Inc., a corporation with an ownership interest in the Player's Club Restaurant. The complaint alleges that this donation was based on a *quid pro quo* for Council votes to assist the Player's Club, which based on its location abutting the Equestrian Village site, had a financial interest in the outcome of these votes.

3. That the donations of \$4,000 from Victoria McCullough on March 29, 2012, \$5,000 from Neil Hirsch on March 23, 2012, and \$5,000 from Steven Rapaport on November 21, 2012 to Respondent's legal defense campaign account, as well the various direct gifts to Respondent by Neil Hirsch (\$2,928 as reported by Respondent on a gift form for temporary housing from June 9, 2012 to August 14, 2012; \$3,148 for a vacation from September 22, 2012 to September 24, 2012; and \$450 in tickets for the Boys and Girls Club Gala on December 1, 2012), were in exchange for votes against the Equestrian Village project on May 22, 2012 and July 10, 2012 at Village Council meetings.
4. That Respondent accepted a position with the Palm Beach County Sheriff's Foundation in January, 2013, in exchange for votes as a Village Council Member that benefited Neil Hirsch and Victoria McCullough. According to the complaint, both Hirsch and McCullough serve as directors of the Foundation.

Three other allegations in this complaint were found not to be legally sufficient and for reasons discussed in the Memorandum of Inquiry, no further investigation of these specific allegations is warranted.

- **Additional persons interviewed for this Investigation**

In addition to persons interviewed for the initial inquiry, the following persons believed to have knowledge about the allegations within the complaint that were found to have a legally sufficient basis to open a preliminary investigation were interviewed:

1. Victoria McCullough, Wellington resident (Interview conducted on February 1, 2013)
2. Richard Seymour, Chair, PBC Sheriff's Foundation
3. John Greene, Village of Wellington Council Member (Respondent - 2nd interview).
4. William Gralnick, Manager, PBC Sheriff's Foundation.

Respondent did not file state a Quarterly Gift Disclosure Form (Form 9) listing the \$4,000 donation from McCullough to his Legal Defense Fund because it was accepted before he took office on April 10, 2012. The donation of \$5,000 from Rapaport to the legal defense fund, the \$2,948 in housing, \$3,180 in vacation expenses, and the \$450 for tickets were listed on Respondent's Quarterly Gift Disclosure Form. Copies of these forms were forwarded to COE staff as required by the Code of Ethics.²

It is important to note that in my initial Memorandum of Inquiry, I stated that Respondent may have failed to report a \$2,500 gift from Hirsch to his Legal Defense Fund Hirsch received in May of 2012. This information is incorrect based on a second statement taken from and records provided by Respondent. The donation to Respondent's legal defense campaign account by Hirsch was \$5,000, not the \$2,500 previously described. Moreover, Respondent provided evidence that he deposited this donation into his legal defense campaign account on March 23, 2012, not in May as originally believed.

This donation was not reported on a gift form by Respondent because he had not yet assumed office. Respondent was sworn into office on April 10, 2012. Accordingly, the donation of \$4,000 from McCullough and the donation of \$5,000 from Hirsch were not reportable gifts under state law. All known reportable gifts were reported by Respondent on State of Florida Gift Forms (Form 9) as discussed above. Therefore, as noted in allegation #1 above, based on this new information, this specific allegation will also be dropped from this preliminary investigation as legally insufficient.³

As listed in the Memorandum of Inquiry, and reproduced in this Memorandum of Investigation, the relevant entries on Respondent's quarterly gift disclosure form are as follows:

² Section 2-444(f)(1), PBC Code of Ethics.

³ See C13-002 Amended Memorandum of Legal Sufficiency

John Greene December 2012 State of Florida Quarterly Gift Disclosure Form (Form 9)

Date Received	Description of Gift	Monetary Value	Name of Person Making Gift	Address of Person Making Gift
6/9/12 – 8/14/2012	Temporary housing	\$2948	Neil Hirsch	12076 Polo Club Rd. Wellington, FL 33414
9/22/12 – 9/24/12	Vacation	\$3148	Neil Hirsch	12076 Polo Club Rd. Wellington, FL 33414
11/21/12	Contribution to Legal Defense Fund	\$5000	Steven Rapapport	316 Garden Rd. Palm Beach, FL 33480
12/1/12	Boys & Girls Club Annual Gala	\$450	Neil Hirsch	12076 Polo Club Rd. Wellington, FL 33414

- **Additional documents submitted to file during this investigation**

The following additional documents were submitted to the investigative file:

1. A copy of a document created by Investigator Bannon entitled, "Greene Timeline," showing the approximate time in which the events listed in the inquiry/preliminary investigation occurred. (1 page)
2. Copy of a bank statement for the period from 03/22/2012 to 03/30/2012 from Respondent's legal defense campaign account showing a deposit of \$5,000 to this account on March 23, 2012, and which Respondent advises was the donation made to him by Neil Hirsch. (1 page)
3. Copy of a bank statement for the period from 3/31/2012 to 4/30/2012 from Respondent's legal defense campaign account showing a check withdrawal of \$9,000 from this fund. (1 page)
4. Copy of a check from this account dated Nov. 27, 2012 made payable to "Richman-Greer" in the amount of \$9,000. (1 page)
5. Copy of a check dated 11/16/2012 from Steven N. Rapapport and Judith A. Garson for \$5,000, made payable to "John Greene Legal Defense Fund." (1 page)
6. Copy of bank statement of Victoria McCullough listing a check for \$4,000 made payable to "John Greene Legal" showing the check was paid on March 29, 2012. (1 page)
7. Unsigned and undated copy of Consulting Agreement between the PBC Sheriff's Foundation and Bari Limerick Corporation. (10 pages)
8. Copy of respondent's resume as submitted to the PBC Sheriff's Foundation as a candidate for the consulting fundraiser contract. (4 pages)
9. Copy of records from the Florida Division of Corporations website (www.sunbiz.org), for Bari Limerick Corporation, listing Respondent as President and registered agent, and the sole officer. (2 pages)
10. Copy of COE advisory opinion RQO 12-081 for Councilman John Greene, published by COE on December 26, 2012, pertaining to his acceptance of employment with the PBC Sheriff's Foundation. (4 pages)
11. Copy of listing of PBC Sheriff's Foundation from the Internal Revenue Service website (www.irs.gov) showing that organization as a registered 501(c)(3) tax deductible organization. (1 page)

- **Investigation**

An interview with Village resident Victoria McCullough was conducted on Friday, February 1, 2013 at the COE office in reference to COE cases C12-015 and C12-016. As discussed in the initial inquiry, complainant alleges that McCullough improperly contributed funds to Respondent's legal defense as well. However, McCullough was not registered as a principal of a lobbyist when she donated \$4,000 to Respondent's legal defense fund in March 2012. Certain information discussed during the McCullough interview is relevant to this investigation based on the allegation that the \$4000 donation was made in exchange for votes by Respondent against the Equestrian Village project.

- **Interview: Victoria McCullough, Village of Wellington resident**

This interview was conducted on Friday, February 1, 2013 at the COE office. Present during this interview was her attorney, Roma W. Theus, II. The interview was recorded and conducted under oath. The interview was began at 10:46 AM, and completed at 11:03 AM. The following are excerpts of that interview that are relevant to this investigation.

Both McCullough and Theus identified themselves for the record. McCullough was then placed under oath, and acknowledged that she was aware that her statement was made under oath.

McCullough agreed that she had written a \$4,000 check to Respondent in March, 2012 for his legal defense of the election issue previously discussed. According to her personal banking statement, supplied to me by McCullough at this interview, check #2131 for \$4,000 was listed as being made payable to the John Greene Legal Defense Fund, and was paid by her bank on March 29, 2012. McCullough agreed that this was also correct. McCullough also stated that she had given \$500 campaign contributions to Respondent, as well as to Margolis and Council Person Matt Wilhite for these local elections and donations of \$4,000 to each candidate for their election defense. She stated that she did not give other funds by way of cash or check to any of these candidates.

We discussed the giving of funds to all three candidates both as campaign donations and to support their legal defense of the election issues. I asked McCullough if any of the funds donated to Respondent, or to any of these candidates were based on her wishing to influence how they voted on issues involving the Equestrian Village project, or to influence their vote on any issue that might come before the Village Council. McCullough stated "No."

We next discussed the Wellington Equestrian Preservation Alliance (WEPA). McCullough stated that she has never been a member, board member or in any way been affiliated with that organization. However, she is a founding member of the Wellington Equestrian Coalition, which she described as a newly formed organization comprised of Robert Coker, Louis Jacobs and former Village Mayor Tom Wenham⁴. McCullough stated that this organization was formed after the March 2012 elections to find the community voice, both equestrian and otherwise in this unique community.

We briefly went back over the issue of donations to Respondent, Margolis and Wilhite. I asked her again, had she given any funds or other gifts to any of these former candidates in order to influence their votes on any issue. McCullough stated, "Nothing of any kind."

End of interview

I was contacted by Respondent by telephone early in the week of April 1, 2013. Respondent told me that he had received documents sent to him by my office, including the Memorandum of Inquiry and the Memorandum of Legal Sufficiency, and that there were some factual errors within these documents which he wished corrected. We agreed to meet at the COE office on Wednesday, April 3, 2013 at 4:00 PM.

- **Second Interview: John Greene, Council Person, Village of Wellington**

On Wednesday, April 3, 2013, I conducted a second interview with John Greene at the COE office. This interview was also recorded and taken under oath. Prior to recording this interview, Greene presented me with several banking documents and we briefly discussed their relevance and application to this case. These documents were also discussed in the recorded interview.

The recorded interview began at 4:15 PM and was concluded at 5:11 PM. At the beginning of the interview, Greene identified himself for the record. Greene was then placed under oath and acknowledged that he was aware he was under oath.

We discussed the fact that some of the information listed in the Memorandum of Inquiry and the Memorandum of Legal Sufficiency by Interim Executive Director Megan Rogers was factually incorrect. Specifically, Greene pointed out that these documents listed him as accepting a \$2,500 donation from Neil Hirsch for his Legal Defense Fund in

⁴ Tom Wenham is listed as the Executive Director of the Wellington Preservation Coalition at their website, www.preservewellington.org. The organization describes their mission as being, "focused on preserving the uniqueness and charm of the Wellington community."

May, 2012. Greene advised me that Hirsch had actually donated \$5,000 to his legal defense, but this donation was made on March 23, 2012. This is the reason the donation was not listed on his Gift Disclosure Forms, because he had not yet been sworn into office when he received these funds. I advised Greene that these issues would be corrected in the Memorandum of Investigation and also the original Memorandum of Legal Sufficiency would be amended to reflect the accurate donation amount and time.

Respondent then addressed the allegation in the complaint that he had changed his views on the Equestrian Village issue from those he held during the campaign. He told me that his views on these issues "Haven't changed since day one." We discussed the issues I listed in my initial Memorandum of Inquiry concerning the allegations of a "*quid pro quo*." I explained to Respondent that that portion of the report was my attempt to take a six (6) page complaint and break it down into specific allegations to address. It was done by way of background and was not an allegation being leveled by me as the investigator.

Respondent also pointed out during our discussion that Player's Club is not the only restaurant in the Village with extended hours as the Inquiry indicates, but that Jo Jo's Restaurant has extended hours as well. His purpose was simply to try and be fair to all restaurants and businesses in the Village, which is why as he told Gando at the meeting with Hirsch, he believed this was an issue that needed to be addressed by the Village Counsel.

The discussion as to the events listed in the complaint, and Respondent's view of these statements as being both untruthful and incorrect went on for some time as we met for nearly an hour. However, there was no additional relevant information taken from this interview.

End of interview.

In continuing the investigation into this matter, I made arrangements to interview Richard Seymour, Chair, PBC Sheriff's Foundation at the COE office on March 25, 2013. One allegation contained in the complaint addressed the position now held by Respondent, and the fact that both Neil Hirsch and Victoria McCullough are members of the board of directors of this foundation.

- **Interview: Richard Seymour, Chair, PBC Sheriff's Foundation**

This interview was conducted with Richard Seymour on Monday, March 25, 2013 at the COE office. The interview began at 3:36 PM and concluded at 3:57 PM. The interview was recorded and taken under oath. At the beginning of this interview, Seymour identified himself by name for the record and was placed under oath. Seymour stated that he understood that he was under oath during this interview.

Seymour verified that he was the Chair of the PBC Sheriff's Foundation (the Foundation) and gave some background as to the mission of the Foundation. Seymour is the founding Chair of the organization. He stated that the Foundation has been in existence for just over two-years (since 2011). Seymour advised that the purpose of the Foundation is to raise funds and provide support for the Palm Beach County Sheriff's Office (PBSO) as an organization and is a mechanism for providing for the protection and safety of the citizens of the county. Seymour explained that a request for funding will come from a PBSO department head and must be approved by a PBSO deputy holding the rank of Major in order to ensure that the request is legitimately something the department needs. Twice per year an allocation committee reviews these requests and awards grant funding accordingly. Seymour gave an example of the Foundation funding a request from the PBSO Tactical Unit for small flashlights that could be attached to the barrel of a firearm, thus allowing the officer to keep one hand free in the dark. The Foundation does not fund specific positions or payroll for these positions.

I asked Seymour if Neil Hirsch is a member of the Foundation Board of Directors (the Foundation Board). He stated, "Yes he is." I asked him about his relationship with Hirsch and was told he did not know Hirsch prior to the Foundation forming and only knows him from the Foundation. Seymour also agreed that Victoria McCullough was a member of the Foundation Board or Directors as well. He also only knows McCullough from this board. Seymour further advised that Bill Gralnick is the Executive Director of the Foundation and is a "loaned executive" from PBSO for this purpose. Seymour advised that Gralnick is a non-sworn PBSO employee who reports to Major Dan Smith.

Gralnick also runs the PBSO Chaplaincy Unit (identified in the PBSO organizational chart found on the PBSO website⁵ as “Volunteer Clergy”). Gralnick has been the Executive Director since the inception of the Foundation.

I verified with Seymour information given to me by Respondent in our initial interview that the Foundation Board is comprised of approximately twenty-two (22) members. I then asked him how one becomes a member of the Foundation Board and if there is a set number of members. Seymour stated that by the organization’s charter there is a set number of members, but he did not know what that number was “off the top of his head.” He also advised that he believed the Foundation Board is probably close to capacity at this point. Seymour stated that he was initially asked to be a Foundation Board member when the Foundation was formed. There are three main duties of Foundation Board members. First members are asked to provide funds to the Foundation if possible. Second they are asked to assist at various fundraising events when possible. And, finally, they are encouraged to provide the Foundation with contacts of other people interested in supporting the mission of the organization by making donations. I asked if both Neil Hirsch and Victoria McCullough are Foundation Board members based on their donations to the Foundation. Seymour replied, “They are major funders.” He did not know the exact amounts each had given to the Foundation. I asked if both Hirsch and McCullough were “active” in the Foundation, to which Seymour replied, “Yes.” I asked if the Foundation held regular meetings and was told they meet every other month, and he believes both attend regularly. He advised that Gralnick would have more specific information available.

We discussed the fact the Foundation has no employees and that Respondent is contracted to provide fundraising for the Foundation. I asked Seymour how Respondent got the position as fundraising contractor for the Foundation. Seymour stated that last year it was determined that in order to maintain funding, they needed to have a resource committed to fundraising and business development. Gralnick then did a regional search for people who were available to fill the position, interviewed several candidates, including Respondent. Respondent was the person selected for the position, so they contracted with his company. Seymour was not involved in the initial interview of candidates, Gralnick did those interviews. However, he did interview Respondent once recommended by Gralnick. After that interview, Seymour made a recommendation to the other Foundation Board members that they enter into an agreement with Respondent. Seymour did say that while Respondent had no background in fundraising, he did have a strong sales background and in security, which gave him an appreciation of the importance of first responder organizations in protecting the community. And, that Respondent exuded that passion in the interview.

I asked Seymour if prior to beginning the search process to fill this position, if he was approached by either Neil Hirsch or Victoria McCullough about Respondent as a possible candidate. Seymour responded, “No.” I then asked if Gralnick had been approached. Seymour replied that he believed Hirsch introduced Respondent to Gralnick, but that any Foundation Board member had the ability to identify any good candidate for consideration. Seymour also verified that once a Respondent was identified as the candidate of choice of Gralnick and approved by Seymour, the Foundation Board was given the opportunity to vote either “yea or nay” on the candidate by email. Once interviewed by both Gralnick and Seymour, a recommendation was made that the Foundation Board should contract with Respondent’s company (identified from the consulting agreement and the records of the Florida Division of Corporations as “Bari Limerick Corporation”). Seymour also advised that Respondent had been careful to make sure that the position was not a conflict with his elected position and had asked the COE for an opinion in this respect.⁶

We next discussed how Respondent is compensated for his company’s work in fundraising for the Foundation. Seymour advised that there is a contract that lays out the specific terms of compensation, at a monthly fee amount (later determined to be \$5,125 per month). I asked if he was paid more if he brought in more donations in certain months. Seymour stated that the contract also allows for additional compensation if certain fundraising objectives are exceeded. I asked if Seymour had seen the actual contract and he replied that he had. I then showed him a copy of an undated and unsigned contract between the Foundation and Respondent’s company, and asked him if this was essentially the contract offered to and signed by Respondent. Seymour identified this document as

⁵ www.pbso.org

⁶ RQO 12-081, published by COE on December 26, 2012.

appearing to be the contract entered into by Respondent and the Foundation. Under this contract, Respondent would have to raise more than \$300,000 per year for the Foundation in order to be paid additional compensation.⁷

I asked if any other person in the Foundation besides Gralnick can direct the activities of Respondent or even terminate his contract. Seymour stated that their obligation as a Board is to provide opportunities to Respondent by way of introductions, contacts and names of potential donors to help him be successful. I then stated, "other than providing leads, directors don't direct his work." Seymour responded that this was correct. However, Respondent does have direct contact with Foundation Board members to obtain these leads and whatever assistance they can provide for him. I asked if a single director could have Respondent fired, to which Seymour replied, "Good question, I don't know the answer to that question."

End of interview.

I made contact with William Gralnick, Executive Director of the PBC Sheriff's Foundation (the Foundation), and arranged to conduct an interview with him on Thursday, April 11, 2012 at 9:00 AM at his office, located at the county's Vista Center, 2300 North Jog Rd., West Palm Beach.

- **Interview: William Gralnick, Executive Director, PBC Sheriff's Foundation**

This interview was conducted with William Gralnick on Wednesday, April 11, 2013 at the county's Vista Center office. The interview began at 9:01 AM and concluded at 9:18 AM. The interview was recorded and taken under oath. At the beginning of this interview, Gralnick identified himself by name for the record and was placed under oath. Gralnick stated that he understood that he was under oath during this interview.

We first discussed the Foundation, its origin and mission, as well as his role within the Foundation. Gralnick stated that he was an employee of the PBC Sheriff's Office (PBSO) and was on loan to the Foundation to manage the day-to-day operations. His title within PBSO related to the Foundation was Project Manager, but he was considered the Executive Director of the Foundation as well. He has been in this position since the inception of the Foundation and has worked in the non-profit industry for over thirty (30) years. The Foundation is a registered 501(c)(3) non-profit organization eligible to receive tax deductible contributions, verified as such by a search of the Internal Revenue Service (IRS) webpage (www.irs.gov). Gralnick stated that he believed they received this designation from the IRS in February 2011, but he had worked on this project for nearly a year prior to that date.

Gralnick advised that the mission of the Foundation is to provide funding assistance to PBSO through the use of grants awarded by the Foundation. This includes funding for such things as community policing projects, equipment, financial assistance for employees with emergency issues, as well as scholarships and training opportunities. The Foundation is funded wholly by donations. The bylaws of the Foundation allow for as many as twenty-six (26) members on the Board of Directors (the Board), and Gralnick stated he believes that as of this point, there are nineteen (19) current board members.

We then began to discuss the position of contracted fundraiser for the Foundation currently held by Respondent. Gralnick advised that because there was a need for increased funding of the mission, it was decided by the Board to employ a fundraiser on a part-time basis. He used his contacts in the industry and placed an advertisement in newsletter of the county chapter of a national fundraising organization. He received four (4) responses, but none of those wanted to be employed in this effort on a part-time basis. Gralnick told me that professional fundraisers can earn \$100,000 to \$150,000 per year. It was then decided that they would explore the possibility of contracting for services. Because fundraising is a specific skill, Gralnick stated that it is important that when fundraising for a particular type of organization, that the fundraiser have a clear understanding of the mission of that organization. Since this was a law enforcement mission, he was looking for someone who understood law enforcement terminology, was clean cut and well spoken.

Gralnick kept the Board apprised of his efforts, and they were aware he was having difficulty finding someone with the requisite skills and abilities. Neil Hirsch contacted Gralnick, told him about Respondent and that Respondent

⁷ The original copy of this contract was provided to COE Investigator James Poag by Dean Turney. Turney had been interviewed by Poag on an unrelated investigation involving a possible violation of the Lobbyist Registration Ordinance (COE case number C13-004), and discussed this contract. He provided a copy to Poag via email on March 23, 2013, which was then forwarded to me.

had a background in both security and sales, and made the initial introduction. Gralnick obtained Respondent's resume, and interviewed him twice. During this time he also interviewed a few other persons by telephone. Respondent appeared to have the best skill set for this position at the cost the Foundation had set and he recommended to Richard Seymour (Board Chair) that Respondent be offered this position. Seymour also interviewed Respondent and concurred with the recommendation. He was also aware of the "issues" in the Village (several Board Members live in the Village), that there was a factional dispute within the Village over some issues, and was aware that after being offered the position, Respondent asked the COE if such a position would conflict with his elected position.

Gralnick advised that much of the Board's business is done by email, since they meet only every other month. Seymour sent an email out requesting that the Board (22 members at that time), vote to approve Respondent. There were twenty-one (21) votes cast, and all but four (4) members voted to accept the recommendation to contract with Respondent. Three (3) members voted not to accept it, and one, Victoria McCullough, did not vote on this issue. Gralnick explained that McCullough did not vote because she had not been sent the email from Seymour. She had written a letter to the Board some time earlier explaining that due to time constraints she might have to resign. Seymour mistakenly took this to mean she was resigning and so did not include her in the voting email. McCullough remains a member of the Board.

I asked Gralnick if Neil Hirsch made any other contact with him concerning Respondent, and specifically if Hirsch attempted in any way to further influence his decision to recommend Respondent for the position. Gralnick stated that he was not contacted by Hirsch about Respondent other than initially providing his name and the initial introduction. I asked if McCullough ever made any contact with Gralnick regarding Respondent being given this position and he stated she had not.

We then discussed how a person becomes a Board Member of the Foundation. Gralnick stated that members must have a desire to help with their mission of funding the grants and are required to donate a minimum of \$1,000 to the Foundation yearly. They also assist in fundraising efforts through personal or business contacts. Gralnick commented that Mark Bellissimo was an original Board member, but was no longer on the Board. I then asked if Hirsch and McCullough were "large donors" to the Foundation and if this affected his decision to recommend Respondent. Gralnick stated that both Hirsch and McCullough were large donors to the Foundation, but that as a professional in the field, he was responsible to all donors and to the organization overall. His recommendation was based on Respondent being the most qualified person to hold this position.

Finally, I addressed whether donor's contributions are kept in a general fund, or if they can specifically contribute to one area of funding, such as the fundraising contract. Gralnick stated that a donor can ask for specific contributions to go toward a specific project (McCullough had asked that 50% of a large donation she made be used to assist the Sheriff's K-9 unit in obtaining new dogs), but that Respondent is paid out of the general fund which is never donation specific. He also advised that a three (3) person allocation committee makes recommendations for spending which is then approved by the Board, but that neither Hirsch nor McCullough is a member of this committee.

End of interview.

Based on the information as listed in this Memorandum of Investigation, staff recommends to the Executive Director that **LEGAL SUFFICIENCY NO LONGER EXISTS** for one significant portion of this Complaint as listed, and recommends that no further investigation by the COE continue for this specific issue:

- That Respondent was a seated Council Person for the Village of Wellington and received a prohibited donation of \$2,500 through a legal defense account on or about May 17, 2012 from Neil Hirsch, a director of an organization (WEPA) that may have employed a lobbyist that lobbied the Village of Wellington at that time.

Sworn testimony and documentary evidence provided by Respondent show that the donation by Neil Hirsch to Respondent's legal defense fund was completed on March 29, 2012, the date when Hirsch's bank paid to cover the issuance of the check for \$5,000 to this fund. As of this date, Respondent was not yet sworn into office as a

Council Person. A 1995 opinion by the Florida Commission on Ethics (COE 95-013)⁸, adopted by the Palm Beach County COE in RQO 12-035 on June 8, 2012, addresses the issue of at what point a candidate for elected office falls within the jurisdiction of the Florida Code of Ethics. RQO 12-035 states in relevant portion, "Accordingly, if you are elected to the District 4 Commission seat **and assume the office**, you will then be subject to the Code and subject to the contractual relationship prohibitions." (Emphasis added) This analysis also transfers to the allegation of accepting a prohibited gift. Since Respondent had not yet assumed the office of Village Council Person, the donation was not prohibited under this section of the code, as it did not yet apply to Respondent. However, whether this donation might still be in violation of the "Prohibited Conduct" sections of the code found in §2-443, requires additional evaluation.

A person who is elected to office does not become a public officer for purposes of the Code of Ethics unless and until he or she assumes such elected office; until that time, a public officer cannot perform an official act. While this may seem at first glance to mean that a candidate can take funds for any purpose, even unlawful ones, as long as they do so prior to assuming their elected office, this is not correct. The question of when funds are received applies to the issue of prohibitions vendor/lobbyist gifts or reporting requirements under the Gift law, but it may not apply to the Prohibited Conduct sections of the code.

Regardless of when funds are received, it is when official action is taken that determines if and when a violation occurs. Were a public official or employee to take, or fail to take, any official action based on receiving unlawful funds, and those funds could be traced to an official act as a *quid pro quo*, the timeframe of the actual receipt of the funds would not determine the lawfulness of the act.

In this case, respondent assumed the office of Village Council Person on April 10, 2012, when he was sworn into office, so the donation by Neil Hirsch was not prohibited, regardless of his position of the WEPA board of directors. However, the allegation of these funds being part of an unlawful *quid pro quo*, remains an issue for the COE to resolve.

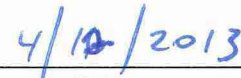
Based on the information as listed in this Memorandum of Investigation, staff recommends to the Interim Executive Director that the investigation revealed facts and circumstances from which the COE could find that **PROBABLE CAUSE EXISTS** to believe that violation(s) of the Code of Ethics occurred in the following instances:

- That the donations of \$5,000 from Neil Hirsch on March 23, 2012, \$4,000 from Victoria McCullough on March 28, 2012, and \$5,000 from Steven Rapaport on November 21, 2012 to Respondent's legal defense fund, as well the various direct gifts to Respondent by Neil Hirsch (\$2,928 as reported by Respondent on a gift form for temporary housing from June 9, 2012 to August 14, 2012; \$3,148 for a vacation from September 22, 2012 to September 24, 2012; and \$450 in tickets for the Boys and Girls Club Gala on December 1, 2012), and the acceptance of a contract for services with the Palm Beach County Sheriff's Foundation, on which both Neil Hirsch and Victoria McCullough are significant donors and serve as members of the Board of Directors, were all based on a *quid pro quo* for votes against the Equestrian Village project on May 22, 2012 and July 10, 2012 at Village Council meetings as opposed by these individuals.

Submitted by:


Mark E. Bannon

PB County Commission on Ethics


Date

Reviewed by:


(Initials)


Date

⁸ COE 95-013, June 1, 1995 ("... we have not had occasion previously to render an advisory opinion as to whether Section 112.316 operates to negate a conflict under Section 112.313(3) in those apparently rare situations in which a contract between a governmental entity and a business is entered into prior to a public officer's assuming public office but after qualification for that office ... The Mayor could not have "acted in his official capacity" to enter into the contract because during the brief window of time during which the contract was entered into he was not yet a public officer and thus possessed no official capacity in which to act ... The prohibitions of Section 112.313(3) only apply to one who actually holds office, not to one who has merely qualified for office.")

Greene Timeline

March 12, 2012

Election Day

John Greene was initially advised he had lost the election to Village Council, Seat 1

March 18, 2012

Audit by Supervisor of Elections found problems with election results in Wellington election.

March 23, 2012

Greene deposits \$5,000 donation from Neil Hirsch into his campaign account for his election legal defense fund.

March 29, 2012

Victoria McCullough sends donation check for \$4,000 to Greene for his election legal defense fund.

March 31, 2012

Greene declared winner of Wellington Council seat 1.

April 10, 2012

Greene sworn in as Village Councilman, Seat 1.

May 21, 2012

Greene sends email to COE asking for an advisory opinion reference to temporary housing gift from Hirsch.

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May 22, 2012

Greene votes to revoke first development order for Equestrian Village project at status review hearing (R2012-07)

June 8, 2012

Hirsch resigns from Board of Directors of Wellington Equestrian Preservation Alliance (WEPA).

June 9, 2012

Greene takes up temporary residence at Hirsch's guest house.

July 10, 2012

Greene votes to revoke second development order for Equestrian Village project (R2012-08)

August 14, 2012

Greene recuses himself from two (2) Council votes based on living at Hirsch's guest house on advice of Village Counsel Jeff Kurtz (one involving Dressage show grounds for Equestrian Village).

Greene's last day of temporary residence in Hirsch's guest house (value: **\$2,948**)

Sept. 11 & 12, 2012

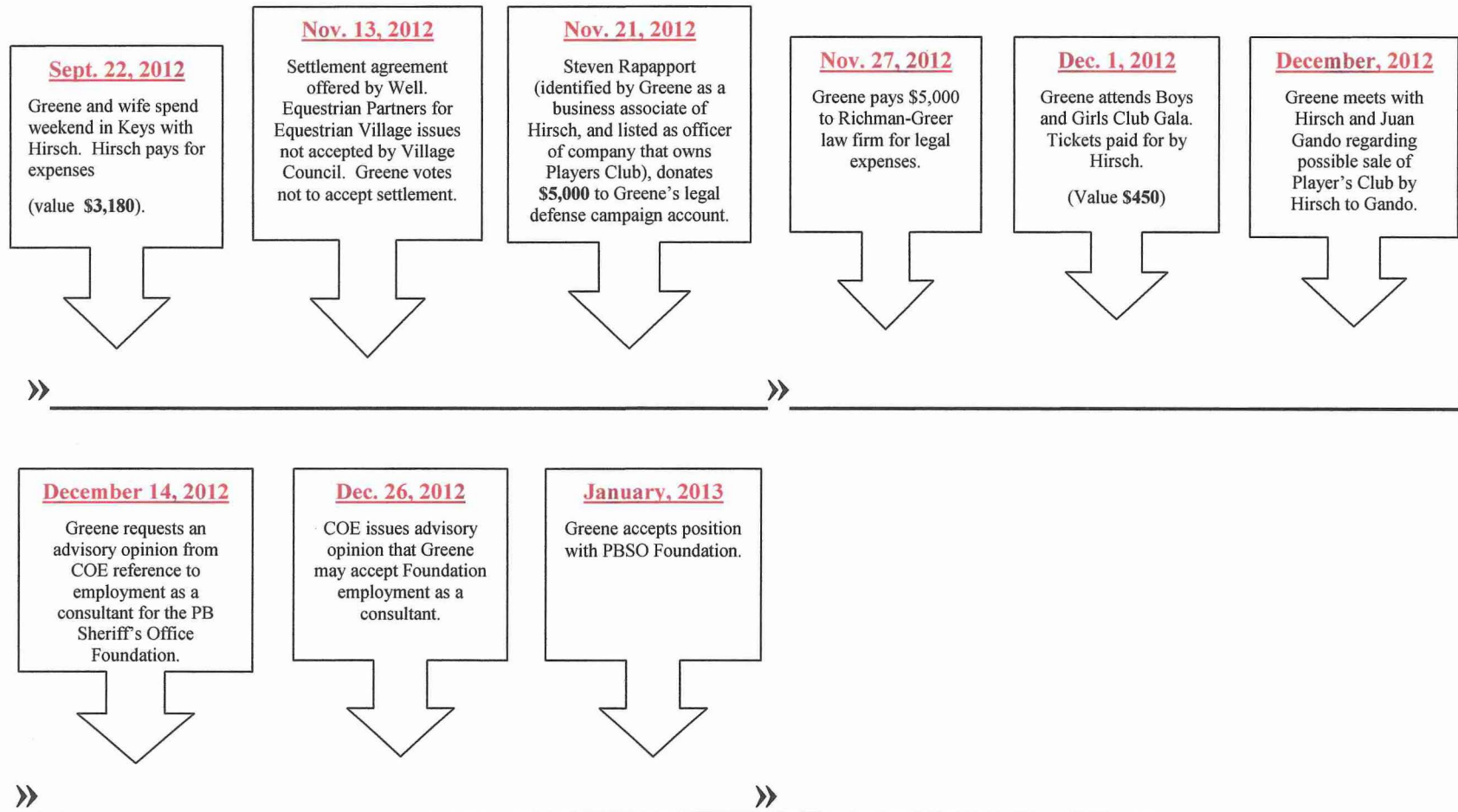
Juan Gando before Village Council. Requests longer restaurant hours and expanded liquor license. Green asked to recuse based on friendship with Hirsch (owner of Player's Club). Greene votes yes to expanded hours, no to expanded liquor license.

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Greene Timeline (cont)



For the period 03/22/2012 to 03/30/2012

218568



CAMPAIGN ACCOUNT OF MR JOHN GREENE
THE LEGAL DEFENSE FUND
11226 MARITIME CT
WELLINGTON FL 33449-8365

Primary account number: [REDACTED]

Page 1 of 3

Number of enclosures: 0

For 24-hour banking sign on to
PNC Bank Online Banking on pnc.com
FREE Online Bill Pay

For customer service call 1-877-BUS-BNKG
Monday - Friday: 7 AM - 10 PM ET
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Write to: Customer Service
PO Box 609
Pittsburgh, PA 15230-9738

Visit us at PNC.com/mybusiness/

TDD terminal: 1-800-531-1648
For hearing impaired clients only

Free Business Checking Summary

Account number [REDACTED]

Overdraft Protection has not been established for this account.
Please contact us if you would like to set up this service.

Campaign Account Of Mr John Greene
The Legal Defense Fund

Balance Summary

Beginning balance	Deposits and other additions	Checks and other deductions	Ending balance
0.00	9,100.00	0.00	9,100.00
		Average ledger balance	Average collected balance
		5,877.77	3,802.22

Deposits and Other Additions

Deposits	3	9,100.00
Total	3	9,100.00

Checks and Other Deductions

Total	0	0.00
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Daily Balance

Date	Ledger balance	Date	Ledger balance	Date	Ledger balance
03/22	100.00	03/23	5,100.00	03/28	9,100.00

Activity Detail

Deposits and Other Additions

Deposits

Date posted	Amount	Transaction description	Reference number
03/22	100.00	Deposit	135735608
03/23	5,000.00	Deposit	135800160



For the period 03/31/2012 to 04/30/2012

139620





CAMPAIGN ACCOUNT OF MR JOHN GREENE
THE LEGAL DEFENSE FUND
11226 MARITIME CT
WELLINGTON FL 33449-8365

Primary account number [REDACTED]

Page 1 of 3


Number of enclosures: 0

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 TDD terminal: 1-800-531-1648
For hearing impaired clients only

IMPORTANT ACCOUNT INFORMATION

The information below amends certain information in our Business Checking Accounts and Related Charges ('Schedule'). All other information in our Schedule continues to apply to your account. Please read this information and retain it with your records.

Effective June 22, 2012

Continuous Overdraft Charge

\$7 assessed each day your account remains overdrawn for a period of five (5) or more consecutive calendar days, up to a maximum of \$98. This charge is in addition to any Overdraft Item Fees or Returned Item (NSF) Fees assessed.

Using Available Funds

Interest on the negative collected balance in your account will no longer be charged.

Free Business Checking Summary

Account number [REDACTED]
Overdraft Protection has not been established for this account.
Please contact us if you would like to set up this service.

Campaign Account Of Mr John Greene
The Legal Defense Fund

Balance Summary

Beginning balance	Deposits and other additions	Checks and other deductions	Ending balance
9,100.00	500.00	9,017.99	582.01
		Average ledger balance	Average collected balance
		1,246.20	1,233.29



CAMPAIGN ACCOUNT OF MR JOHN GREENE
THE LEGAL DEFENSE FUND
11226 MARITIME CT
WELLINGTON, FL 33449-8365

1031

63-8419/2670
709

Nov-27, 2012
Date

Pay to the
Order of

Richman - Greer

\$ 5000 00

Five Thousand and 0/100

Dollars



Security
Features
Details on
Back.



PNC Bank, N.A. 001

For 8559-0000001 GFR

John Greer
MP



Harland Clarke

22766

STEVEN N. RAPPAPORT
JUDITH A. GARSON

J.P.Morgan

JPMorgan Chase Bank, N.A.
New York, New York

1-2-210

11/16/2012

PAY TO THE
ORDER OF John Greene Legal Defense Fund

\$**5,000.00

Five Thousand Dollars Only*****

DOLLARS

John Greene Legal Defense Fund

Security features. Details on back.



MEMO

AUTHORIZED SIGNATURE





Friendly account name: Victoria's RMA
Account number: [REDACTED]

Account activity this month (continued)

Check number	Date	Description	Amount (\$)
Checks (continued)			
002126	Mar 19	CASH	-700.00
002127	Mar 22	TOD'S AIR CONDITIONING INC	-416.00
002131	Mar 29	JOHN GREENE LEGAL	-4,000.00
002132	Mar 30	JEFF HUNT	-505.00
002151	Mar 26	CASH	-750.00
002153	Mar 26	CASH	-650.00
002154	Mar 27	LAURENCEO CANO	-650.00
002158	Mar 26	CASH	-450.00
002159	Mar 26	CASH	-450.00
002160	Mar 26	CASH	-450.00
Total checks			-\$88,162.43

MISSING CHECKS
2128, 2129, 2130
APR. 2012
K. believes it was
check # 2130 or
(# 2128)

2131-2150
APR
2151-2158
APR

Date	Activity	Description	Amount (\$)
Bill payments			
Mar 1	Withdrawal	ACH WITHDRAWAL HUMANA INSURANCE	-862.89
Total bill payments			-\$862.89

Card Items for your Attention:

Shop with confidence-whether you use your UBS credit card online or offline, you'll never be held responsible for any fraudulent charges. Even better, use your UBS credit card for purchases and you can extend the manufacturer's warranty for up to one year. Enjoy extraordinary protections that just make your life easier.

Transaction date	Posting date	Description	Amount (\$)
Cash/ATM transactions			
[REDACTED]			
VICTORIA D MCCULLOUGH			
Feb 28	Feb 29	CASHCONNECT	-\$202.50
		ATM FEE REBATE	\$2.50
Mar 06	Mar 07	CASHCONNECT	-\$402.00

continued next page

CONSULTING AGREEMENT

THIS AGREEMENT entered into this ____ day of _____, 2012, by and between The Palm Beach County Sheriff's Foundation, Inc., located at 2300 North Jog Road, West Palm Beach, Florida, 33411 (hereinafter the "Foundation"), and BariLimerick Corporation, located at _____ (hereinafter the "Contractor").

WHEREAS, the Foundation is engaged in activities to enhance the ability of the Palm Beach County Sheriff's Office to better accomplish its own mission; and

WHEREAS, the Foundation wishes to retain the Contractor, and the Contractor desires to be engaged by the Foundation, to perform certain consulting services described herein (the "Consulting Services");

NOW, THEREFORE, in consideration of the promises and mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. **Recitals.** The foregoing recitals are true and correct and incorporated herein by this reference, as if set forth in their entirety.

2. **Consulting Services.** The Foundation and the Contractor agree that the Consulting Services by the Contractor will be to provide the Foundation with advice and assistance in fundraising activities. The Foundation and the Contractor agree that the Contractor shall function and perform its Consulting Services as an independent contractor (as described in Section 5 below). The Contractor will communicate with Rick Seymour, the Chairman of the Foundation, or such other person as the Foundation may identify from time to time, regarding services performed pursuant to this Agreement. In no event may Contractor execute any agreement on behalf of the Foundation. Contractor hereby acknowledges and agrees that this Agreement is not exclusive and the Foundation may retain other consultants at any time and for any purpose it deems appropriate.

3. **Term of Agreement.** This Agreement, subject to the provisions of Section 15 herein, shall be in effect from January 1, 2013 , through December 31, 2013 .

4. **Consulting Fee.** As a full and complete fee for the Contractor's services hereunder, Contractor will be paid a monthly fee of Five Thousand One Hundred Twenty-Five Dollars (\$5,125.00). The Contractor will bill Contractor's fees to the Foundation by invoice on a monthly basis. The Foundation will pay each invoice, subject to its reasonable satisfaction with the Contractor's services, within thirty (30) days after receipt. In addition to the foregoing Consulting Fee, the Contractor will be eligible to receive an additional consulting fee upon reaching certain fundraising levels as set forth in the attached Appendix A. The Foundation shall be entitled to deduct from the Consulting Fee (and any other sums) due to the Contractor any sums that the Contractor may owe to the Foundation at any time.

5. **Independent Contractor Status.**

(a) The Foundation will not reimburse the Contractor for any expenses the Contractor incurs in connection with the services that the Contractor provides under this Agreement unless expressly authorized by the Foundation in writing.

(b) The Contractor will bear sole responsibility for payment on behalf of the Contractor of any federal, state or local income or employment tax or withholding, unemployment insurance, workers' compensation insurance, liability insurance, health insurance, retirement or other welfare or pension benefits, and/or other payments and expenses. The Contractor agrees to indemnify and hold the Foundation harmless in respect of all such payments claimed or assessed by any taxing authority, including reasonable attorneys' fees. The Contractor understands and agrees that the Contractor is not eligible for, and the Contractor hereby waives any claim to, wages, compensation incentives, profit-sharing participation, health coverage or any other benefits that may be provided to employees of the Foundation. The Contractor and the Foundation hereby acknowledge and agree that this Agreement does not constitute a hiring or employment agreement by either party. The Contractor will not be eligible to participate in any of the Foundation's employee benefit plans or programs and will have no authority to enter into or incur any obligation or liability on the Foundation's behalf.

(c) The Contractor is not being engaged by the Foundation on a full-time, exclusive basis and the Contractor will retain the right to perform the Contractor's services for the general public and other organizations, except for other law enforcement/military organizations, during the term of this Agreement. The Contractor and the Foundation intend and agree that the Contractor is an independent contractor and that nothing in this Agreement will be interpreted or construed as creating or establishing the relationship of employer and employee, agency, partnership, or joint venture between the Foundation and the Contractor.

(d) If the nature of the services provided by the Contractor requires that the services be performed at the Foundation premises, then the Foundation will provide the Contractor such working space and facilities as may be reasonably necessary; but the Foundation will not integrate Contractor into its business operations. Additionally, the Foundation will not control and will have no right to control the manner, means or method by which the Contractor performs services. However, the Foundation will have the right to exercise general supervision over the results to be derived from the Contractor's services and the date by which such services will be completed, and will determine whether such services were satisfactory to the Foundation. In that regard, the Foundation intends to inform the Contractor as to whether the Foundation is satisfied with the Contractor's services on or around April 1, 2013, and July 1, 2013, unless this Agreement is terminated earlier pursuant to Section 15 herein.

(e) If at any time the Contractor's status as an independent contractor is challenged, the Contractor agrees promptly to give the Foundation notice thereof and to cooperate fully with the Foundation in defending such challenge if so requested.

6. Confidential and Proprietary Information; Nondisclosure.

(a) For purposes of this Agreement, "**Confidential and Proprietary Information**" means information disclosed to the Contractor or known by the Contractor as a consequence of or through the unique position of the Contractor's engagement by the Foundation or any of its subsidiaries or associates (including information conceived, originated, discovered or developed by the Contractor and information in respect of which the Foundation has a duty of confidence to any third party) prior to or after the date of this Agreement, and not generally or publicly known, about the Foundation or its affairs, including without limitation donor lists and fundraising strategies, or business or any third party to whom the Foundation owes a duty of confidence. In consideration of the benefits provided for in this Agreement, the Contractor and John Greene agree not to, at any time, either during the term of this Agreement or thereafter, disclose, divulge, report, download, transmit, store, transfer or

use, for any purposes whatsoever, and to keep in the strictest confidence any Confidential and Proprietary Information, except: (i) as may be necessary to the performance of the Contractor's Consulting Services on behalf of the Foundation; (ii) with the express written consent of Rick Seymour, the Chairman of the Foundation; (iii) to the extent that any such information is in or becomes in the public domain other than as a result of the Contractor's breach of any of its obligations hereunder or the wrongful act of any other person; or (iv) where required to be disclosed by court order, subpoena or other government process and in such event, the Contractor shall cooperate with the Foundation in attempting to keep such information confidential.

(b) Confidential and Proprietary Information; Foundation's Property. The Contractor covenants and agrees that all right, title and interest in any Confidential and Proprietary Information shall be and shall remain the exclusive property of the Foundation and shall be and hereby are vested and assigned by the Contractor to the Foundation. The Contractor agrees to promptly disclose to the Foundation all Confidential and Proprietary Information developed in whole or in part by the Contractor within the scope of this Agreement. The Contractor agrees to turn over to the Foundation all physical and non-physical manifestations of the Confidential and Proprietary Information in its possession or under its control at the request of the Foundation or on termination of this Agreement (for whatever reason and howsoever the termination may be caused). To the extent that the Contractor has access to any Confidential and Proprietary Information, Contractor further agrees to store and maintain all Confidential and Proprietary Information in a secure place. Upon termination of this Agreement (for any reason whatsoever), Contractor agrees to make no further use of any Confidential and Proprietary Information on Contractor's own behalf or on behalf of any person or entity other than the Foundation or any of its subsidiaries and associates.

(c) If the Contractor hires any employees, other than John Greene, during the term of this Agreement, the Contractor agrees to require its employees to execute confidentiality agreements incorporating the restrictions contained in paragraphs 6(a) and 6(b) above.

7. Non-Solicitation.

(a) The Contractor and John Greene agree that during the term of this Agreement and for a period of twelve (12) months following termination of this Agreement for any reason whatsoever, whether such termination is voluntary or involuntary, the Contractor and John Greene will not, directly or indirectly, do or suffer or otherwise encourage or assist any person to solicit or attempt to solicit donations from, otherwise associate with or accept donations from any person or entity that (a) was a donor to the Foundation at any time, and (b) whom the Contractor pursued during its/his relationship with the Foundation, or to otherwise interfere with any business relationship between the Foundation, on the one hand, and any other person or entity, on the other hand.

(b) If the Contractor hires any employees, other than John Greene, during the term of this Agreement, the Contractor agrees to require its employees to execute non-solicitation agreements incorporating the restrictions contained in paragraph 7(a) above.

8. Reasonableness and Enforcement of Sections 6 and 7.

(a) Reasonableness. The Contractor acknowledges that, in the course of the Contractor's association with the Foundation, the Contractor will acquire Confidential and Proprietary Information concerning the Foundation's business that could be used to the detriment of the Foundation. Accordingly, the parties hereby agree that the period, scope and geographical areas of

restriction imposed upon the Contractor by the provisions of Sections 6 and 7 of this Agreement are fair and reasonable and are reasonably required for the protection of the Foundation. The Contractor warrants and represents to the Foundation that the Contractor's experience and capabilities are such that the provisions of Sections 6 and 7 of this Agreement will not prevent the Contractor from earning a livelihood. In the event that any part of Sections 6 and/or 7 of this Agreement shall be held to be unenforceable or invalid, the remaining parts hereof shall nevertheless continue to be valid and enforceable as though the invalid portions were not a part hereof. In the event that the provisions of Sections 6 and/or 7 of this Agreement relating to the area of restriction, the period of restriction, or the scope of restriction shall be deemed to exceed the maximum area, period of time or scope that a court of competent jurisdiction would deem enforceable, said area, period of time and scope shall, for purposes of this Agreement, be deemed to be the maximum area or period of time or scope that a court of competent jurisdiction would deem valid and enforceable.

(b) Enforcement.

(i) The Contractor expressly agrees and understands that the remedy at law for any breach by the Contractor of Sections 6 and/or 7 will be inadequate and that damages flowing from such breach are not usually susceptible to being measured in monetary terms. Accordingly, it is acknowledged that upon the Contractor's violation of any provision of Sections 6 and/or 7, the Foundation shall be entitled to obtain from any court of competent jurisdiction (including without limitation state and federal courts in Palm Beach County, Florida, where the parties consent and shall not contest that venue shall be proper) immediate injunctive relief and obtain a temporary order and/or injunction restraining any threatened or further breach, as well as an equitable accounting of all profits or benefits arising out of such violation. The Contractor expressly waives any security that might otherwise be required in connection with such relief. Nothing in this paragraph shall be deemed to limit the Foundation's remedies at law or in equity for any breach by the Contractor of any of the provisions of this Agreement which may be pursued by the Foundation.

(ii) In the event the Foundation applies to seal any papers produced or filed in any judicial proceedings to preserve confidentiality, the Contractor hereby specifically agrees not to oppose such application and to use the Contractor's best efforts to join such application.

(iii) In addition to the remedies provided in subsection (1) above, the Contractor understands that in the event of any breach of this Agreement by the Contractor, it shall forfeit all payments by the Foundation that have not been paid at the time of the breach. Notwithstanding the foregoing, the Contractor agrees that the Foundation may also enforce Sections 6 and/or 7 of this Agreement after the termination of this Agreement.

(c) Assignment and Enforceability. The Contractor expressly agrees that Sections 6 and 7 shall be binding upon and shall inure to the benefit of the Foundation and its successors and assigns; it may be assigned by the Foundation in its discretion and without the Contractor's consent and neither a formal assignment nor notice to the Contractor shall be required. The Contractor also expressly agrees that Sections 6 and 7 are intended for the benefit and may be enforced by any of the Foundation's parent companies, subsidiaries and/or affiliates. Sections 6 and 7 shall be binding upon the Contractor's heirs, executors, administrators or other legal representatives or assigns.

(d) Claims of the Contractor are Separate Matters. It is understood by and between the parties hereto that the foregoing covenants contained in Sections 6 and 7 are essential elements of this Agreement, and that but for the agreement by the Contractor to comply with such covenants, the

Foundation would not have agreed to enter into this Agreement. Such covenants by the Contractor shall be construed to be agreements independent of any other provisions of this Agreement. The existence of any claim or cause of action by the Contractor against the Foundation, whether predicated upon this Agreement or otherwise, shall not constitute a defense to the enforcement by the Foundation of Sections 6 and/or 7 set forth herein but shall be claimed and litigated separately.

(e) Survival. Notwithstanding anything to the contrary contained in this Agreement, the provisions of Sections 6 and 7 shall survive the expiration or termination of this Agreement.

(f) Reformation by Court. In the event that a court of competent jurisdiction determines that any provision of Sections 6 and/or 7 is invalid or more restrictive than permitted under the governing law of such jurisdiction, then only as to enforcement of Sections 6 and/or 7 within the jurisdiction of such court, such provision shall be governed by, interpreted, construed and enforced as if it provided for the maximum restriction permitted under such governing law.

9. **Representations and Warranties.** By executing this Agreement, the Contractor hereby expressly represents and warrants that (i) its employees have never been convicted of a crime (other than any juvenile offense or adjudication) punishable by death or imprisonment in excess of one (1) year or that involves dishonesty or a false statement regardless of the punishment; and (ii) no government or quasi-government license (or the like) that the Contractor has ever held has been revoked. The Contractor also represents and warrants that the Contractor's performance of the services called for by this Agreement does not and will not violate any applicable law, rule, regulation, or contracts with third parties and will not infringe upon the rights of third parties, including property, contractual, employment, trade secret, proprietary information and non-disclosure rights, or any trademark, copyright or patent rights, nor breach any other agreement to which the Contractor is a party or may be bound.

10. **Non-Disparagement.** The Contractor acknowledges and agrees that at no time during or after its engagement with the Foundation will the Contractor publicly disparage in any way the Foundation or any of its companies, affiliates, subsidiaries, parent companies, employees, officers, agents, shareholders, partners or directors.

11. **Supporting Documentation.** Upon execution of this Agreement, the Contractor shall provide to the Foundation the following documents:

(a) a certificate of good standing as a corporation under the laws of the state of Contractor's incorporation;

(b) any governmental license or permit that may be required for the proper and lawful conduct of the Contractor's business; and

(c) evidence of compliance with any insurance requirement described herein.

Failure by the Contractor to provide the Foundation any documents required under this paragraph shall be grounds for withholding payment of the Contractor's invoices.

12. **Indemnification.** In addition to any other obligations the Contractor may have to indemnify the Foundation under this Agreement, the Contractor shall indemnify, defend and hold the Foundation harmless against all claims, demands, liabilities, losses, damages, costs or expenses,

including attorneys' fees, resulting from any suit or proceeding brought for any claim of breach of contract, infringement of copyrights, patents, trademarks or other proprietary rights, or for unfair competition arising from compliance with or utilization of the Contractor's advice, designs, specifications or instructions, or for any claims to which the Foundation is subjected by reason of any act or omission on the Contractor's part in connection with the performance of the Contractor's Consulting Services under this Agreement.

13. **Compliance with Laws and Regulations.** While providing services for the Foundation, the Contractor shall comply with all applicable laws, rules and regulations; as well as all applicable Foundation policies and rules (as maybe modified from time to time).

14. **Enforceability.** In the event any provision of this Agreement is found to be legally unenforceable, such unenforceability shall not prevent the enforcement of any other provision herein.

15. **Termination of Agreement.** The Foundation may, at its sole option, terminate this Agreement with or without cause at any time and, to the extent practicable, will provide the Contractor with five (5) business days' advance written notice of such termination. If the Foundation terminates this Agreement, the Contractor immediately will deliver to the Foundation: (i) a written invoice for the pro rata value of services performed by the Contractor and unpaid by the Foundation as of the termination date; and (ii) any then-existing information compiled by the Contractor for the Foundation and/or any work product resulting from the Contractor's services hereunder. In the event of the termination of this Agreement, the Foundation shall have no further obligation to the Contractor under this Agreement other than the payment of all amounts theretofore payable hereunder for services previously completed by the Contractor and accepted by the Foundation.

16. **Section 409A of the Code.** With regard to the reimbursements provided under Section 21 hereof, except as permitted by Code Section 409A, (i) the right to reimbursement shall not be subject to liquidation or exchange for another benefit, (ii) the amount of expenses eligible for reimbursement, provided during any taxable year shall not affect the expenses eligible for reimbursement in any other taxable year, and (iii) such payments shall be made on or before the last day of the Contractor's taxable year following the taxable year in which the expense was incurred.

17. **Waiver.** Unless agreed in writing, the failure of either party, at any time, to require performance by the other of any provisions hereunder shall not affect its right thereafter to enforce the same, nor shall a waiver by either party of any breach of any provision hereof be taken or held to be a waiver of any other preceding, succeeding, or simultaneous breach of any term or provision of this Agreement. No extension of time for the performance of any obligation or act shall be deemed to be an extension of time for the performance of any other obligation or act hereunder.

18. **Severability.** The invalidity or unenforceability, in whole or in part, of any covenant, promise, or undertaking, or any section, subsection, paragraph, sentence, clause, phrase or word of any provision of this Agreement shall not affect the validity or enforceability of the remaining portions thereof.

19. **Governing Law.** This Agreement shall, for all purposes, be governed and interpreted by, and construed in accordance with, the laws of the State of Florida , without regard to Florida 's conflict of law rules.

20. **Dispute Resolution/Venue.** The Foundation and the Contractor acknowledge and agree that state or federal courts located in Palm Beach County, Florida, shall be the venue and

exclusive proper forum in which to adjudicate any case or controversy arising either, directly or indirectly, under or in connection with this Agreement or the parties' relationship and the parties further agree that, in the event of litigation arising out of or in connection with this Agreement or their relationship in these courts, they will not contest or challenge the jurisdiction or venue of these courts. The Foundation and the Contractor further agree that service of a summons and complaint or any other court process or paper may be effected on such party by mail at the address set forth in Section 27 herein, or in such other manner as may be provided under applicable laws or court rules in said state.

21. **Attorneys' Fees.** In the event that a legal action is brought to enforce the terms of this Agreement, the prevailing party shall be entitled to recover its costs, including all attorneys' fees at all trial and appellate levels. The non-prevailing party in any such legal proceeding shall pay such amount within sixty (60) days following the Determination Date. The "Determination Date" is the date upon which a court determines or the parties agree the amount of costs, including all attorneys' fees that the prevailing party is entitled to recover. For purposes hereof, the Foundation shall be deemed the prevailing party notwithstanding any reduction of geographical location, period of time or scope of restrictions pursuant to Sections 6 and/or 7 hereof. Attorneys' fees shall include, without limitation, paralegal fees, investigative fees, administrative costs, sales and use taxes and all other charges billed to the Foundation by its attorneys.

22. **Completeness and Modification.** This is the entire Agreement between Contractor and the Company regarding its subject matter and supersedes any prior agreements or understandings. This Agreement may, without further consideration, be amended, modified, superseded or canceled, and any of the terms, covenants, representations, warranties or conditions hereof may be waived, only by a written instrument executed by the parties or, in the case of a waiver, by the party to be charged.

23. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which shall constitute but one agreement.

24. **Assignment.** This Agreement, including but not limited to Sections 6 and 7, shall not be assignable by the Contractor but shall be assignable by the Foundation in connection with the sale, transfer or other disposition of its business or to any of the Foundation's companies, affiliates or successors controlled by or under common control with the Foundation. For the avoidance of doubt, the Contractor shall not delegate its duties to any third party or assign, transfer, sub-contract or in any other manner make over to any third party the benefit and/or the burden of this Agreement without the prior written consent of the Foundation, which may be withheld for any reason. Any purported attempt of the Contractor to assign in violation of this Section 24 shall be a material breach of this Agreement.

25. **Headings.** The headings used herein are for convenience only and shall not control or affect the meaning or construction or limit the scope or intent of any of the provisions of this Agreement.

26. **Survival.** Any termination of this Agreement shall not affect the ongoing provisions of this Agreement which shall survive such termination in accordance with their terms.

27. **Notices.** All notices required or permitted to be given pursuant to this Agreement shall be in writing and shall be personally delivered by courier, sent by registered or certified mail, return receipt requested, or sent by confirmed facsimile transmission addressed as set forth herein. Notices

personally delivered, sent by facsimile or sent by overnight courier shall be deemed given on the date of delivery and notices mailed in accordance with the foregoing shall be deemed given upon the earlier of receipt by the addressee, as evidenced by the return receipt thereof, or three (3) days after deposit in the U.S. Mail. Notice shall be sent (i) if to the Foundation, addressed to: The Palm Beach County Sheriff's Foundation, Inc., 2300 North Jog Road, West Palm Beach, Florida, 33411, Attention: Rick Seymour, and (ii) if to the Contractor, addressed to, Bari Limerick Corporation, _____, Florida _____, Attention: John Greene.

28. **Construction/Interpretation of Agreement.** The language in all parts of this Agreement shall be construed as a whole, according to fair meaning, and not strictly for or against any party. In drafting this Agreement, the Contractor has been fully represented by counsel of Contractor's choosing and the terms of this Agreement have been fully negotiated by the parties. Consequently, the parties agree that, in the event of any ambiguity, this Agreement should not be construed against the Foundation as a result of being drafted by counsel for the Foundation.

IN WITNESS WHEREOF, the parties have duly executed and delivered the Agreement as of the date first above written.

The Palm Beach County Sheriff's Foundation, Inc.

By: _____

Rick Seymour

Its: _____

Bari Limerick Corporation

By: _____

John Greene

Its: _____

John Greene

Inline Attachment Follows: header.htm

For purposes of this Agreement, “qualifying cash obtained” means: (i) gross amount of donations obtained by the Contractor’s solicitations for the Foundation from persons who have not previously donated to the Foundation (“new donors”), and (ii) 30% of the value of the donations obtained by the Contractor’s solicitations for the Foundation from persons who have donated to the Foundation in the previous years (“existing donors”); however, if the donation amount of an existing donor is over 100% of that donor’s last year’s donation, the entire amount over 100% of the previous amount will count towards the qualifying cash obtained. For example, if a donor contributed \$10,000 in 2012, and the Contractor obtained a contribution of \$10,000 in 2013 from that same donor, the Contractor would receive credit for \$3,000.00 towards the “qualifying cash obtained.” If the Contractor obtained a contribution of \$20,000 in 2013 from that same donor, the Contractor would receive credit for \$13,000 towards the “qualifying cash obtained.”

The additional consulting fee will be determined based on the following schedule:

Total Qualifying cash obtained Due to Contractor’s Solicitations in 2013	Additional Consulting Fee
\$300,000.00	\$5,000.00
\$400,000.00	\$5,000.00
\$500,000.00	\$10,000.00
\$550,000.00	\$5,000.00
\$600,000.00	\$5,000.00
\$650,000.00	\$5,000.00
\$700,000.00	\$15,000.00
\$750,000.00	\$5,000.00
\$800,000.00	\$15,000.00
\$850,000.00	\$5,000.00
\$900,000.00	\$15,000.00
\$950,000.00	\$5,000.00
\$1,000,000.00	\$20,000.00

Cash received after the close of the year 2013, even if attributable to donations solicited in 2013, will not count towards “qualifying cash obtained” in 2013.

“Qualifying cash obtained” will be calculated after the close of each month and after a full accounting is done to verify cash received during the month. If the thresholds above are met, the additional consulting fee will be paid to the Contractor within 30 days following the close of the month in which that threshold was met.

JOHN J. GREENE
11226 Maritime Court
Wellington, FL 33449
E-mail: johnjgreene@bellsouth.net
Cell: 561.351.5762

CAPABILITIES PROFILE

Dynamic sales and marketing professional with extensive experience developing new business opportunities in competitive markets. Successful in managing multi-million dollar sales volumes while establishing long term business relationships with clients. A top sales performer with exceptional prospecting, networking, and troubleshooting capabilities along with persuasive communication and presentation skills. Highly motivated, passionate and creative thinker with an entrepreneurial spirit. Depth of experience includes the following:

- | | | |
|---|--|--|
| <input type="checkbox"/> Sales/Sales Management | <input type="checkbox"/> Strategic Marketing | <input type="checkbox"/> Product Development |
| <input type="checkbox"/> New Account Development | <input type="checkbox"/> Budget Planning | <input type="checkbox"/> Cost Analysis |
| <input type="checkbox"/> Sales Analysis/Direction | <input type="checkbox"/> Civic Leadership | <input type="checkbox"/> Process Improvement |

PROFESSIONAL EXPERIENCE

Councilman, Village of Wellington, Florida	2012 - Present
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- Successfully campaigned for and was elected to office in March 2012
- Raised \$50,000 during my four month campaign
- Govern and set policy for the Village of Wellington, FL
- Population; 56,000+ full time residents
- 250 full-time employees
- \$74,000,000 annual operating budget

Vice President – Business Development, Private Security - Florida	2011 - 2012
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- Responsible for business development for Guardsmark, LLC and Navarro Security
- Managed a territory from Orlando to Key West
- Worked closely with former FBI and Secret Service professionals on securing new business
- Main focus was in healthcare, defense contractors, ports, transportation and corporate security

J Group Creative, LLC, Wellington, Florida	2006 - 2011
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Owner

- Create and implement marketing and advertising solutions for clients.
- Commitment to brand awareness with a strong understanding of my client's target audience.
- Source marketing and advertising collateral/production both domestically and overseas.
- Civic minded leadership committed to the community.
- Strong awareness to changes in the marketplace and product innovation.
- Focused on meeting each client's goals and achieving their desired ROI.
- Secured over \$5.0 million dollars in new business at or above desired profit margins.
- Developed web based promotional resources for 180 Toyota dealers throughout the southeast.
- Established partnership agreements with outside vendors, which gave us a competitive advantage in the marketplace.

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WS PACKAGING GROUP, INC., Saint Louis, Missouri / West Palm Beach, Florida	1999 - 2006
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Senior Account Executive

- Secured a long-term contract with a prospect that became a top ten account. Annual revenue with this customer exceeded \$3 million.
- Asked by senior management to relocate to Florida after developing a successful territory in St. Louis.
- Consistently exceeded sales goals in both territories I developed.
- Serve as the national account manager for a top customer with revenue in excess of \$1.5 million.
- Established several long term agreements with customers generating \$1 million + in sales.
- Member of the elite "Turbo" group representing the top sales professionals in our company.
- Selected to participate in a round table conference in Boston to establish sales priorities and objectives.
- Appointed to an advisory board for a beverage client's product launch.
- Initiated and lead a process improvement team to uncover inefficiencies in the sales/manufacturing process.
- Earned the trust and respect of my peers and senior management by demonstrating professionalism and respect at all levels of the organization.

SUN CHEMICAL CORPORATION, Saint Louis, Missouri 1999	1994 -
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Account Representative

- Managed a sales volume in excess of \$4.5 million in 1998 compared to \$600,000 in 1994.
- Increased sales volume from several existing key accounts by more than 100%.
- Played a key role in securing \$1.50 million dollar contract for 10 company branches.
- Assumed greater sales responsibility after 25% reduction in staff and increased sales by 45%.

- Received the Sales Achievement Award for outstanding sales performance in 1997 and 1998.
- Satisfied a customer's need to reduce the number of rush orders by creating a consignment program.
- Provided product technical training on printing inks to customers
- Initiated a plan to translate ink management procedures to non English speaking workers.
- Identified and reduced dormant inventory by 70% through special promotions to customers, coordinated with other branches, and returns to manufacturers.

BABY WONDERLAND, INC., Miami, Florida

1991 - 1994

President/Owner

- Successfully established a new business specializing in infant and juvenile furniture, custom bedding, clothing, and accessories in a highly competitive market.
- Oversaw all day to day operations, including hiring and managing staff, selling, purchasing and pricing.
- Created and implemented all marketing, advertising and merchandising strategies.
- Prepared budget forecasts and developed financial plans for long and short term goals.
- Worked closely with and maintained positive relationships with the juvenile industry's leading manufacturers and sales representatives.
- Attended local/national trade shows to preview introductory products and conduct preseason buying.

ITT COMMERCIAL FINANCE CORP., Saint Louis, Missouri

1989 - 1991

Customer Service Manager (1991)

- Provided support for sales department to maintain continuity between sales and operations.
- Identified and called on inactive dealers and focused on negative trends in volume.
- Managed the overflow of newly activated business and resolved customer complaints.

Floorcheck Coordinator/Manager, Quality Control (1990-1991)

- Coordinated inter-branch audits and tracked payments for audits performed.
- Ensured that intra and inter-branch audits were performed in accordance with company policy.
- Managed the hiring, training, evaluation and supervision of 12 field service representatives and administrative assistants.

Field Service Representative (1989-1990)

- Conducted physical inspections of dealer inventories on a monthly basis.
- Adjusted account problems related to misapplication of funds or credit balances.

EDUCATION

Bachelor of Arts in Business Administration, Webster University, Saint Louis, Missouri, August 1988

PROFESSIONAL TRAINING

Institute for Elected Municipal Officials, Village of Wellington, Tampa, FL June 2012

Sandler Sales Training, WS Packaging Group, Atlanta, Georgia, June 2004

Microsoft Software Training; Excel, Word, WS Packaging Group, St. Louis, MO, 2001

Sales Training Seminar, Sun Chemical Corporation, Chicago, Illinois, August 1998

Sales Training Seminar, ITT Commercial Finance Corp., Dallas, Texas, June 1991

Supervision & Management Training, ITT Commercial Finance Corp., St. Louis, MO, December 1990

Customer Service Excellence Seminar, ITT Commercial Finance Corp., St. Louis, MO, May 1989

ASSOCIATIONS / MEMBERSHIPS

- Wellington Community Foundation, Inc. - Vice-Chairman, – 2012 - Present
- Advertising Federation of Greater Fort Lauderdale – Legislative Chair 2009-2010
- Advertising Federation of Greater Fort Lauderdale – 1st Vice President 2008-2009
- AMA (American Marketing Association) – South Florida Member 2004 - 2006
- IOPP (Institute of Packaging Professionals) – Member 2003 - 2006
- Founding member of the Board of Directors; Mariner's Cove Neighborhood Association; served as vice-president, president and secretary/treasurer. Chairman of the fines/enforcement committee.
- The Isles At Wellington; member of the landscape committee for the master association.

REFERENCES



Mr. Neil Hirsch
Founder, Telerate Systems, Inc.
Wellington, FL 33414
561-379-2993

Mr. Jeff Stoops, President/CEO
SBA Communications
5900 Broken Sound Parkway NW
Boca Raton, FL 33487
561-995-7670

Robert H. (Hunter) Whittington, President
Whittington Benefit Services
2840 NW Boca Raton Blvd.
Boca Raton, FL 33431
561-620-0064

Appendix A - Additional Consulting Fee

The additional consulting fee, if any, will be determined based on qualifying cash obtained from donations that the Contractor secures for the Foundation in 2013.

FLORIDA DEPARTMENT OF STATE DIVISION OF CORPORATIONS					
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<u>Florida Profit Corporation</u>					
BARI LIMERICK CORPORATION					
<u>Filing Information</u>					
Document Number	P13000005292				
FEI/EIN Number	NONE				
Date Filed	01/15/2013				
State or Country	FL				
Status	ACTIVE				
<u>Principal Address</u>					
11226 MARITIME COURT WELLINGTON, FL 33449					
<u>Mailing Address</u>					
11226 MARITIME COURT WELLINGTON, FL 33449					
<u>Registered Agent Name & Address</u>					
GREENE, JOHN 11226 MARITIME CT. WELLINGTON, FL 33449					
<u>Officer/Director Detail</u>					
Name & Address					
Title PRES					
GREENE, JOHN 11226 MARITIME COURT WELLINGTON, FL 33449					
<u>Annual Reports</u>					
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State of Florida, Department of State



Palm Beach County Commission on Ethics

Commissioners

Manuel Farach, *Chair*
Robin N. Fiore, *Vice Chair*
Ronald E. Harbison
Daniel T. Galo
Patricia L. Archer

Executive Director

Alan S. Johnson

December 26, 2012

Councilman John Greene
Village of Wellington
12300 W. Forest Hill Blvd
Wellington, FL 33414

Re: RQO 12-081
Charitable Solicitation/Outside Employment

Dear Councilman Greene,

Your request for an expedited advisory opinion pursuant to Commission on Ethics Rule of Procedure 2.6 has been received and reviewed. The opinion rendered is as follows:

YOU ASKED, in your submission dated December 14, 2012 whether you are prohibited by the Palm Beach County Code of Ethics (the Code) from accepting employment with the Palm Beach County Sheriff's Foundation, a 501(c)3 Non-Profit Charitable Organization (the Foundation).

IN SUM, based upon the facts you have submitted, you are not prohibited under the Code from taking a position with a non-profit charitable organization. However, as an elected official you are prohibited from using your official position as a Village Councilman to give a special financial benefit, not shared with similarly situated entities in the community, to your outside employer. Lending your name *and* official title to the Foundation's fundraising effort would *per se* constitute using your elected office to specially financially benefit the Foundation. This applies to you, as well as anyone indirectly soliciting on your behalf. Therefore, your participation in fundraising for the Foundation would need to be in your personal name without title or connection to your official position.

Insofar as the gift law is concerned, you are not prohibited from soliciting donations in your non-official capacity. However, should the Foundation solicit or accept a donation in excess of \$100 from a vendor, lobbyist, or principal or employer of a lobbyist of the Village of Wellington, you must maintain a record of the solicitation and submit a log to the Palm Beach County Commission on Ethics within 30 days of the event, or if no event, within 30 days of the solicitation.

Lastly, the COE cannot speculate, regarding potential conflicts of interest, as to issues that may come before the Village Council in the future. Whether a conflict exists depends upon the facts and circumstances presented at that time.

THE FACTS as we understand them are as follows:

You are a councilman for the Village of Wellington (the Village). You have been offered a paid position as the Development Director for the Palm Beach County Sheriff's Foundation (Foundation). The Foundation is an independent 501(c)3 non-profit charitable organization developed to supplement the budget of the Sheriff's

Department (PBSO). Funds raised by the foundation increase the capacity of specialty divisions within PBSO, such as the Mounted (equestrian) Unit, Canine Unit and Community Relations Department. Your anticipated start date is January 1, 2013.

The Village contracts with PBSO for policing services and as Village Councilman you will be called upon to vote on that contract. You have advised that the Foundation is a separate legal entity that is not controlled by PBSO; no employee or official of PBSO serves as a board member or officer of the Foundation. The Foundation is prohibited from supporting or opposing candidates for office or lobbying. In your capacity as Development Director, you would be responsible for raising money and awareness in the private sector in order to better support public safety needs throughout Palm Beach County.

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:

Sec. 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:

- (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;

An "Outside Employer" is defined in §2-442 as any non-governmental entity of which an official or employee is a member, official, director, proprietor, partner or employee and from which he or she receives compensation for services rendered or goods sold or produced. As a compensated consultant for the Foundation, the Foundation is your outside employer as contemplated by the Code.

No employee or official may use their official position or title to obtain a special financial benefit for themselves or their outside employer.¹ A financial benefit is defined as anything of value.² In your position with the Foundation you will be responsible for raising money from private sector donors. The Code prohibits you from using your official title anywhere in these solicitations. To do so would constitute using your position to specially financially benefit your outside employer, resulting in a violation of the misuse of office section of the code.³

While PBSO contracts with the Village, the Foundation does not. Accordingly, the prohibitions contained in §2-443(d) *Contractual Relationships* do not apply based upon the facts presented.

Section 2-444(a) of the Palm Beach County Code of Ethics prohibits a member of a local governing body, "or any other person or business entity on his or her behalf" from knowingly soliciting or accepting, directly or indirectly, any gift with a value greater than \$100 in the aggregate for the calendar year, from a vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to the municipality.

¹ RQO 11-029 (an employee or elected official who serves as an officer or director of a charitable organization may not use their official title or elected office in soliciting donations; to do so would per se constitute using their employment or elected office to specially financially benefit that charity)

² §2-442 *Financial Benefit* includes any money, service, license, permit, contract, authorization, loan, travel, entertainment, hospitality, gratuity, or any promise of any of these, or anything else of value...

³ RQO 11-051 (where it is foreseeable that an employee or official will receive a salary or other form of financial benefit from a non-profit organization they may not use their official title to specially financially benefit that charity)

However, §2-444(h) creates an exception to this prohibition for charitable donations solicited on behalf of a 501(c)3 non-profit organization, recognized as such under the IRS regulations. The gift law, as revised, no longer prohibits elected officials, advisory board members and public employees from soliciting vendors, lobbyists, principals or employers of lobbyists who lobby their government when the solicitation is made on behalf of non-profit or charitable organizations, so long as a detailed log is maintained pursuant to 2-444(h). A *charitable solicitation log* can be found on our website at www.palmbeachcountyethics.com/Forms and should include the following information:

- 1) Name of the charitable organization for which you are soliciting; and
- 2) Name of the person and entity that was solicited; and
- 3) The event, if any, for which the funds were solicited; and
- 4) Amount of funds solicited and pledged.

You must file this form with the Commission on Ethics office within 30 days of the charitable event or within 30 days of the solicitation if not related to an event. You may not solicit any person or entity with a pending application before the Village.

THE RATIONALE for limiting solicitation or acceptance of charitable donations by public employees and officials from lobbyists and vendors of their public employer is grounded in the desire to avoid the appearance of indirectly obtaining a financial benefit for a favored charity by using the power of one's official position to secure the donation. As for charitable gifts involving lobbyists, principals or vendors, the charitable solicitation log serves to increase transparency and help to remove the appearance that donations are made to obtain good will, or otherwise influence official decisions or improperly obtain access to public employees or officials.

Furthermore, Section 2-444(e) states as follows:

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.*

Gifts may not be solicited or accepted because of the past, present or future performance of a legal duty or official action. You must take great care that solicitations accepted on behalf of the Foundation do not result in a *quid pro quo* for your "official action" as Village Councilman.

The COE will not speculate as to any future potential voting conflicts of interest with issues related to PBSO. Any questions regarding voting conflicts would need to be submitted with specific facts and circumstances relative to a potential conflict, and special care must be taken under the circumstances due to your employment by a Foundation which supports a vendor of the Village.

IN SUMMARY, based upon the facts and circumstances you submitted, the Code does not prohibit you from accepting employment with the Foundation. However, you may not use your elected office to give the Foundation a special financial benefit not available to other similarly situated entities. Therefore, you must take great care not use your official position or title, directly or indirectly, in any solicitation or acceptance of donations.

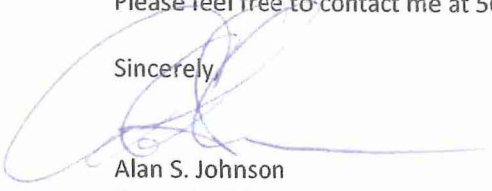
Any solicitation of donations from vendors, principals or lobbyists of the Village in excess of \$100 must be transparent. Therefore, you, or anyone soliciting in your name, must keep a detailed log of your contact with

those donors and submit a copy to the Palm Beach County Commission on Ethics. In any event, you may not solicit any gift on behalf of the Foundation in exchange for a special consideration or other "quid pro quo" in your official capacity as a Village councilman.

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



Exempt Organizations Select Check

[Exempt Organizations Select Check Home](#)

Organizations Eligible to Receive Tax-Deductible Contributions (Pub. 78 data) - Search Results

The following list includes tax-exempt organizations that are eligible to receive tax-deductible contributions. Click on the "Deductibility Status" column for an explanation of limitations on the deductibility of contributions made to different types of tax-exempt organizations.

Results are sorted by EIN. To sort results by another category, click on the icon next to the column heading for that category. Clicking on that icon a second time will reverse the sort order. Click on a column heading for an explanation of information in that column.

1-1 of 1 results

Results Per Page 25

« Prev | 1-1 | Next »

EIN ▲	Legal Name (Doing Business As) ▲
27-2615023	Palm Beach County Sheriffs Foundation

City ▲
West Palm Bch

State ▲	Country ▲
FL	United States

Deductibility Status ▲
PC

« Prev | 1-1 | Next »

March 15, 2012

Dr. Ginger Pedersen, Historic Resources Preservation Board
City of Boynton Beach
100 East Boynton Beach Blvd.
Boynton Beach, FL 33425

Re: RQO 12-012
Gift Law/Vendor Gifts

Dear Dr. Pedersen,

Your request for advisory opinion from the Palm Beach County Commission on Ethics (COE) has been received and reviewed. The opinion rendered is as follows:

YOU ASKED in your email dated Tuesday, February 21, 2012, whether as a member of the Boynton Beach Historic Resources Preservation Board, you may enter into a publishing agreement with a publishing company that is a former vendor of the municipality you serve.

IN SUM, while you may not use your official position to obtain a financial benefit not available to similarly situated members of the general public, the Code of Ethics does not prohibit you from entering into a book publishing contract with a company that formerly provided goods and services to Boynton Beach.

THE FACTS as we understand them are as follows:

You are a member of the Boynton Beach Historic Resources Preservation Board (the Board), a municipal advisory board created by the Boynton Beach City Commission in late 2011. The Board recommends and nominates properties for historic designation, advises property owners on historic preservation matters and acts upon applications to renovate/rehabilitate structures listed on the historic register.

You are a full-time faculty member at Palm Beach State College where you serve as the Dean of Curriculum, Planning and Research. You have been offered a publishing contract from The History Press (THP) to write a book on Palm Beach County Pioneers, namely Fred S. Dewey and Byrd Spilman Dewey. THP was a vendor of Boynton Beach (the City) in fiscal years 1990-2000, but has not provided goods or services to the City since that time. You anticipate that the book will be published in the fall and will contain one chapter that discusses the history of the City. You have no ownership interest in THP and are not a THP employee.

THE LEGAL BASIS for this opinion is found in the following relevant sections of the revised Palm Beach County Code of Ethics:

Section 2-443(a) prohibits an official or employee from using his or her official position to obtain a special financial benefit, not shared with similarly situated members of the general public, for him or herself, or his or her outside business or employer, or a customer or client. Section 2-443(b) prohibits an employee from using an official position to *corruptly secure or attempt to secure a special privilege, benefit, or exemption for himself, herself, or others*. In view of these provisions, you may not use your position as a board member to give a special financial benefit to yourself or THP.

The use of one's government service in a biographical statement or curriculum vitae as one of a number of employment, social and community accomplishments and awards does not trigger this provision. However, specifically trading on one's official position or using one's official title to promote personal or outside business interests may violate the code.

Section 2-443(d) prohibits an official from entering into contracts or other transactions for goods or services with their respective municipality. This prohibition includes contractual relationships between the municipality and the officials outside business or employer. The term employer includes any non-governmental entity *of which the official is a member, official, director, proprietor, partner or employee, and from which he or she receives compensation for services rendered or goods sold or produced.*¹ You have been offered a publishing contract to produce a book. You have no other ownership or ongoing compensatory relationship with THP. Such an agreement does not constitute employment within the meaning of the code.

IN SUMMARY, based on the facts and circumstances you have submitted, the Palm Beach County Code of Ethics does not prohibit you from contracting with THP to write a book about the history of Palm Beach County. THP is not a vendor of the City for the purposes of the Code of Ethics. Compensation received in accordance with your publishing contract with THP does not constitute employment as defined by the Code of Ethics. However, you may not use your official position to give a special financial benefit to yourself or THP in the promotion of your book.

This opinion construes the Palm Beach County Code of Ethics Ordinance, but 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.

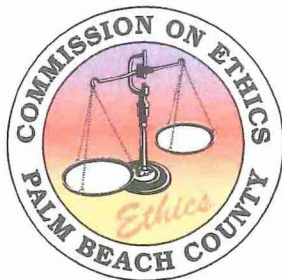
Please feel free to contact me at (561) 233-0724 should you have any further questions in this matter.

Sincerely,

Alan S. Johnson,
Executive Director

ASJ/mcr/gal

¹§ 2-443(d)



Palm Beach County Commission on Ethics

Commissioners

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Robin N. Fiore, *Vice Chair*
Edward Rodgers
Ronald E. Harbison
Daniel T. Galo

Executive Director

Alan S. Johnson

June 8, 2012

John Szerdi
LDG Florida Architects, Inc
120 North Federal Highway, Suite 211
Lake Worth, FL 33460

Re: **RQO 12-035**
Conflict of Interest/Prohibited Contracts

Dear Mr. Szerdi,

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 submission dated April 24, 2012, whether as a filed candidate running for the Office of Commissioner for the City of Lake Worth (the City), you may participate in a Request For Qualifications (RFQ) and ultimately enter into a contract with the City. You also asked whether you would have a conflict if elected, should the contract be ongoing.

IN SUM, as a candidate for City Commission, you are not considered an official as defined by the Palm Beach County Code of Ethics (the Code). However, if you are elected, you may not enter into a contractual relationship with the City. If you assume office, an existing contract may continue until completed provided there are no changes, alterations or renewals.

THE FACTS as we understand them are as follows:

You are a local businessman and architect in the City. You are also a candidate for City Commission, District 4, and qualified with the City Clerk on December 7, 2011 for the upcoming November, 2012 election.

As a local architect, you have been asked to team up with some firms to respond to a Request for Qualifications (RFQ) from the City for a City project. The RFQ is related to a City public services complex design/build project. You would be part of a team of contractors, engineers and architects hired to produce the design and construction of the project. As an architect, you are not a sole source provider of these services to the City. The RFQ is not a bid, but a submittal of qualifications that indicate the design team has the experience and knowledge to accomplish the project. The City will then go through a short-listing process and pick certain design teams to make presentations to the selection committee. The selected design team will go through contract negotiations and, if successful, will be awarded the project. Otherwise, the City will begin negotiations with the second place design team. You anticipate that the selection process will be completed within the next 60 days and that once awarded, there will

be no modifications, changes or renewals to the contract which will have been entered into prior to your assuming office.

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:

Section 2-443(d) states as follows:

Contractual relationships. No official or employee shall enter into any contract or other transaction for goods or services with their respective county or municipality. This prohibition extends to all contracts or transactions between the county or municipality as applicable or any person, agency or entity acting for the county or municipality as applicable, and the official or employee, directly or indirectly, or the official or employee's outside employer or business. Any such contract, agreement, or business arrangement entered into in violation of this subsection may be rescinded or declared void by the board of county commissioners pursuant to § 2-448(c) or by the local municipal governing body pursuant to local ordinance as applicable.

An official of the City may not enter into a contract or other transaction for goods or services with the City. There are several exceptions to this prohibition, including an award made under a system of sealed, competitive bidding to the lowest bidder, provided certain safeguards are followed.¹ The RFQ that you are considering is not a sealed competitive low bid process. There is also an exception for sole source providers of goods and services within the City.² You do not qualify for these exceptions.

However, as a candidate, you are not an official as defined by the Code as you are not *a member of a local municipal governing body*.³ The COE has issued a number of opinions regarding its jurisdiction over public officials and employees. For example, a vendor of the County may enter into multiple contractual relationships with the County notwithstanding the fact that the vendor serves as a director of a non-profit organization that receives funding from the County.⁴ Regarding former public officials and employees, the Code definition of official and employee applies to his or her current status. Therefore, a former employee of the County is not subject to the contractual relationship prohibition.⁵ Accordingly, if you are elected to the District 4 Commission seat and assume the office, you will then be subject to the Code and subject to the contractual relationship prohibitions.

Applying the Code to candidates for office, in regard to an already existing contract, the Code does not apply retroactively.⁶ However, while an existing contract may continue, any changes, revisions, alterations or renewals, occurring after jurisdiction is effective, are subject to the contractual relationships prohibition of the Code. Therefore, if you were to have an existing contract for goods or services with the City upon taking office, any subsequent change would subject the entire transaction to the Code, and the contract would be prohibited unless a valid exception applies. In addition, once you take office, any issues coming before the City Commission involving the contract or the project, even if they do not involve contract changes, may constitute a conflict of interest and you would be prohibited from participating or voting. At all times, as a City official, you are prohibited from using your official

¹ §2-443(e)(1)

² §2-443(e)(3)

³ §2-442 Definitions. Official or employee

⁴ RQO 11-020, also, see RQO 11-043

⁵ RQO 11-014

⁶ RQO 12-001 (a public employee's outside business is not prohibited from fulfilling the terms of its licensing agreement with the municipality entered into prior to the effective date of the Code)

position to specially financially benefit yourself, your outside business or employer or a customer or client of your outside business or employer as defined by the Code.⁷ The COE cannot speculate as to specific facts and circumstances that may or may not violate these provisions unless and until they are presented for an advisory opinion.

Although the COE cannot opine as to state law, you need to be aware that the Florida Code of Ethics prohibition on doing business with one's agency extends to contracts entered into after *qualification for elective office*.⁸ While this section would appear to disallow entering into a contract between qualification for elective office and assuming elected office, the State of Florida Commission on Ethics has opined that notwithstanding the language of §112.313(3)(b), state prohibitions do not apply until a public officer actually holds the office.⁹

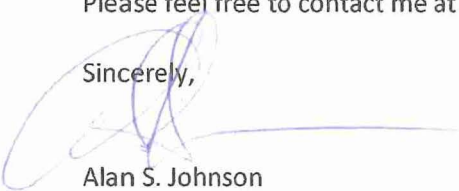
IN SUMMARY, the Palm Beach County Code of Ethics does not apply retroactively to actions that have taken place before a person becomes subject to its jurisdiction. In your case, the term official applies to current status as a member of a governing body. Therefore, entering into a contract for goods or services with the City prior to becoming an official for the City would not violate the *contractual relationships* provision of the Palm Beach County Code of Ethics. However, upon taking office, any change, revision, alteration or renewal would alter the status of the contract or transaction and may violate the prohibition against contracting with one's government.

Notwithstanding, the COE encourages you to submit your question to the State of Florida Commission on Ethics regarding the application of the state prohibition to qualified candidates for elective office.

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, including possible conflicts under §112.313(3)(b), Florida Statutes. 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

AJS/gal

⁷ §2-443(a) misuse of public office or employment, §2-442 Definitions. Customer or client

⁸ §112.313(3)(b),

⁹ COE 95-013, June 1, 1995 ("...we have not had occasion previously to render an advisory opinion as to whether Section 112.316 operates to negate a conflict under Section 112.313(3) in those apparently rare situations in which a contract between a governmental entity and a business is entered into prior to a public officer's assuming public office but after qualification for that office...The Mayor could not have "acted in his official capacity" to enter into the contract because during the brief window of time during which the contract was entered into he was not yet a public officer and thus possessed no official capacity in which to act...The prohibitions of Section 112.313(3) only apply to one who actually holds office, not to one who has merely qualified for office."



Palm Beach County Commission on Ethics

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Robin N. Fiore, *Vice Chair*
Ronald E. Harbison
Daniel T. Galo
Patricia L. Archer

Executive Director

Alan S. Johnson

December 26, 2012

Councilman John Greene
Village of Wellington
12300 W. Forest Hill Blvd
Wellington, FL 33414

Re: RQO 12-081
Charitable Solicitation/Outside Employment

Dear Councilman Greene,

Your request for an expedited advisory opinion pursuant to Commission on Ethics Rule of Procedure 2.6 has been received and reviewed. The opinion rendered is as follows:

YOU ASKED, in your submission dated December 14, 2012 whether you are prohibited by the Palm Beach County Code of Ethics (the Code) from accepting employment with the Palm Beach County Sheriff's Foundation, a 501(c)3 Non-Profit Charitable Organization (the Foundation).

IN SUM, based upon the facts you have submitted, you are not prohibited under the Code from taking a position with a non-profit charitable organization. However, as an elected official you are prohibited from using your official position as a Village Councilman to give a special financial benefit, not shared with similarly situated entities in the community, to your outside employer. Lending your name *and* official title to the Foundation's fundraising effort would *per se* constitute using your elected office to specially financially benefit the Foundation. This applies to you, as well as anyone indirectly soliciting on your behalf. Therefore, your participation in fundraising for the Foundation would need to be in your personal name without title or connection to your official position.

Insofar as the gift law is concerned, you are not prohibited from soliciting donations in your non-official capacity. However, should the Foundation solicit or accept a donation in excess of \$100 from a vendor, lobbyist, or principal or employer of a lobbyist of the Village of Wellington, you must maintain a record of the solicitation and submit a log to the Palm Beach County Commission on Ethics within 30 days of the event, or if no event, within 30 days of the solicitation.

Lastly, the COE cannot speculate, regarding potential conflicts of interest, as to issues that may come before the Village Council in the future. Whether a conflict exists depends upon the facts and circumstances presented at that time.

THE FACTS as we understand them are as follows:

You are a councilman for the Village of Wellington (the Village). You have been offered a paid position as the Development Director for the Palm Beach County Sheriff's Foundation (Foundation). The Foundation is an independent 501(c)3 non-profit charitable organization developed to supplement the budget of the Sheriff's

Department (PBSO). Funds raised by the foundation increase the capacity of specialty divisions within PBSO, such as the Mounted (equestrian) Unit, Canine Unit and Community Relations Department. Your anticipated start date is January 1, 2013.

The Village contracts with PBSO for policing services and as Village Councilman you will be called upon to vote on that contract. You have advised that the Foundation is a separate legal entity that is not controlled by PBSO; no employee or official of PBSO serves as a board member or officer of the Foundation. The Foundation is prohibited from supporting or opposing candidates for office or lobbying. In your capacity as Development Director, you would be responsible for raising money and awareness in the private sector in order to better support public safety needs throughout Palm Beach County.

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:

Sec. 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:

- (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;

An "Outside Employer" is defined in §2-442 as any non-governmental entity of which an official or employee is a member, official, director, proprietor, partner or employee and from which he or she receives compensation for services rendered or goods sold or produced. As a compensated consultant for the Foundation, the Foundation is your outside employer as contemplated by the Code.

No employee or official may use their official position or title to obtain a special financial benefit for themselves or their outside employer.¹ A financial benefit is defined as anything of value.² In your position with the Foundation you will be responsible for raising money from private sector donors. The Code prohibits you from using your official title anywhere in these solicitations. To do so would constitute using your position to specially financially benefit your outside employer, resulting in a violation of the misuse of office section of the code.³

While PBSO contracts with the Village, the Foundation does not. Accordingly, the prohibitions contained in §2-443(d) *Contractual Relationships* do not apply based upon the facts presented.

Section 2-444(a) of the Palm Beach County Code of Ethics prohibits a member of a local governing body, "or any other person or business entity on his or her behalf" from knowingly soliciting or accepting, directly or indirectly, any gift with a value greater than \$100 in the aggregate for the calendar year, from a vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to the municipality.

¹ RQO 11-029 (an employee or elected official who serves as an officer or director of a charitable organization may not use their official title or elected office in soliciting donations; to do so would per se constitute using their employment or elected office to specially financially benefit that charity)

² §2-442 *Financial Benefit* includes any money, service, license, permit, contract, authorization, loan, travel, entertainment, hospitality, gratuity, or any promise of any of these, or anything else of value...

³ RQO 11-051 (where it is foreseeable that an employee or official will receive a salary or other form of financial benefit from a non-profit organization they may not use their official title to specially financially benefit that charity)

However, §2-444(h) creates an exception to this prohibition for charitable donations solicited on behalf of a 501(c)3 non-profit organization, recognized as such under the IRS regulations. The gift law, as revised, no longer prohibits elected officials, advisory board members and public employees from soliciting vendors, lobbyists, principals or employers of lobbyists who lobby their government when the solicitation is made on behalf of non-profit or charitable organizations, so long as a detailed log is maintained pursuant to 2-444(h). A *charitable solicitation log* can be found on our website at www.palmbeachcountyethics.com/Forms and should include the following information:

- 1) Name of the charitable organization for which you are soliciting; and
- 2) Name of the person and entity that was solicited; and
- 3) The event, if any, for which the funds were solicited; and
- 4) Amount of funds solicited and pledged.

You must file this form with the Commission on Ethics office within 30 days of the charitable event or within 30 days of the solicitation if not related to an event. You may not solicit any person or entity with a pending application before the Village.

THE RATIONALE for limiting solicitation or acceptance of charitable donations by public employees and officials from lobbyists and vendors of their public employer is grounded in the desire to avoid the appearance of indirectly obtaining a financial benefit for a favored charity by using the power of one's official position to secure the donation. As for charitable gifts involving lobbyists, principals or vendors, the charitable solicitation log serves to increase transparency and help to remove the appearance that donations are made to obtain good will, or otherwise influence official decisions or improperly obtain access to public employees or officials.

Furthermore, Section 2-444(e) states as follows:

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.*

Gifts may not be solicited or accepted because of the past, present or future performance of a legal duty or official action. You must take great care that solicitations accepted on behalf of the Foundation do not result in a *quid pro quo* for your "official action" as Village Councilman.

The COE will not speculate as to any future potential voting conflicts of interest with issues related to PBSO. Any questions regarding voting conflicts would need to be submitted with specific facts and circumstances relative to a potential conflict, and special care must be taken under the circumstances due to your employment by a Foundation which supports a vendor of the Village.

IN SUMMARY, based upon the facts and circumstances you submitted, the Code does not prohibit you from accepting employment with the Foundation. However, you may not use your elected office to give the Foundation a special financial benefit not available to other similarly situated entities. Therefore, you must take great care not use your official position or title, directly or indirectly, in any solicitation or acceptance of donations.

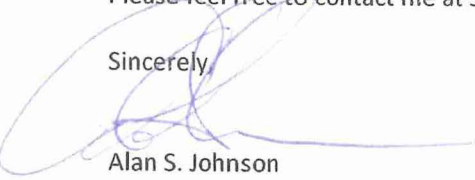
Any solicitation of donations from vendors, principals or lobbyists of the Village in excess of \$100 must be transparent. Therefore, you, or anyone soliciting in your name, must keep a detailed log of your contact with

those donors and submit a copy to the Palm Beach County Commission on Ethics. In any event, you may not solicit any gift on behalf of the Foundation in exchange for a special consideration or other "quid pro quo" in your official capacity as a Village councilman.

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.

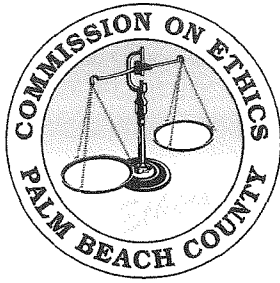
Please feel free to contact me at 561-233-0724 if I can be of any further assistance in this matter.

Sincerely,



Alan S. Johnson
Executive Director

ASJ/mcr/gal



Palm Beach County Commission on Ethics

Commissioners

Manuel Farach, *Chair*
Robin N. Fiore, *Vice Chair*
Ronald E. Harbison
Daniel T. Galo
Patricia L. Archer

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

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.

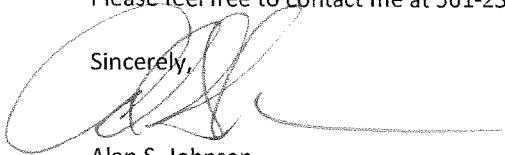
any benefit resulting from some act or omission which is inconsistent with the proper performance of his public duties.

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,

A handwritten signature in black ink, appearing to read 'ASJ', with a long horizontal flourish extending to the right.

Alan S. Johnson,
Executive Director

ASJ/mcr/gal



Lobbyist Registry



Lobbyist Registry Search

Search By: Government Entity

Select: Wellington

Show: Lobbyist

[Search](#)[Clear](#)

Search Results

[Filter Search Results](#)

Lobbyist List

Lobbyist Name	Lobbyist Address	Firm Name	Lobbyist Details	Expenditure Details
Forrest, Mathew	505 South Flagler Drive, Suite 1450, West Palm Beach, FL 33401	Ballard Partners		
Giddings, Susan	12794 W. Forest Hill Blvd, Ste 31, Wellington, FL 33414	Spare Hands, Inc.		
Glas-Castro, Kim	230 E. Ilex Drive, Lake Park, FL 33403			
Gogola, Steven	11392 Paradise Cove Lane, Wellington, FL 33414			
Halperin, Ellie	1601 Forum Place Suite 500, West Palm Beach, FL 33401	Levy Kneen PI		

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Additional Information

Principal List for Forrest, Mathew

Company Name	Principal Name	Principal Details	Lobbyist Principal Details/ Registration & Withdraw Effective Dates
Solar Sportsystems, Inc	Bissett, Bill		
City Of Palm Beach Gardens	Ferris, Ronald		
Palm Beach Kennel Club	Love, Joseph		



Lobbyist Registry



Lobbyist Registry Search

Search By: Principal

Company Name/Principal Last Name: Solar Sportsystems

[Search](#)[Clear](#)

Search Results

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Principal List

Company Name	Principal Name	Principal Details
Solar Sportsystems, Inc	Bissett, Bill	
Solar Sportsystems, Inc.	Keller, Bryan	

Additional Information

Lobbyist List for Solar Sportsystems, Inc

Lobbyist Name	Lobbyist Address	Firm Name	Lobbyist Details	Lobbyist Principal Details/ Registration & Withdraw Effective Dates
Forrest, Mathew	505 South Flagler Drive, Suite 1450, West Palm Beach, FL 33401	Ballard Partners		
Miller, Bradley	508 E. Boynton Beach Blvd. , Boynton Beach, FL 33435	Miller Land Planning Consultants, Inc.		
Panza, Tom	3600 North Federal Highway, Fort Lauderdale, FL 33308	Panza, Maurer & Maynard, P.A.		



Lobbyist Registry



Lobbyist Registry Search

Search By: Principal

Company Name/Principal Last Name: Solar Sportsystems

Search Results

Principal List


Company Name	Principal Name	Principal Details
Solar Sportsystems, Inc	Bissett, Bill	
Solar Sportsystems, Inc.	Keller, Bryan	

Additional Information

Lobbyist List for Solar Sportsystems, Inc.

Lobbyist Name	Lobbyist Address	Firm Name	Lobbyist Details	Lobbyist Principal Details/ Registration & Withdraw Effective Dates
Perry, Martin	2401 Pga Boulevard, Suite 110, Palm Beach Gardens, FL 33410	Perry & Taylor, P.A.		

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Detail by Entity Name

Florida Profit Corporation

SPERIN, INC.

This detail screen does not contain information about the 2013 Annual Report.
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Filing Information

Document Number	P99000072849
FEI/EIN Number	650951302
Date Filed	08/16/1999
State	FL
Status	ACTIVE
Last Event	REINSTATEMENT
Event Date Filed	10/17/2001
Event Effective Date	NONE

Principal Address

13410 S. SHORE BLVD.
WELLINGTON FL 33414

Changed 02/03/2005

Mailing Address

555 MADISON AVE.
29TH FLOOR
NEW YORK NY 10022

Changed 01/22/2007

Registered Agent Name & Address

GALLE, CRAIG T
13501 SOUTH SHORE BOULEVARD, #103
WELLINGTON FL 33414 US

Name Changed: 04/18/2008

Address Changed: 04/18/2008

Officer/Director Detail

Name & Address

Title PD

HIRSCH, NEIL
555 MADISON AVE. 29TH FLOOR
NEW YORK NY 10022

Title S

RAPPAPORT, STEVEN
555 MADISON AVE. 29TH FLOOR
NEW YORK NY 10022

Title T

ZIMMERMANN, ALAN
555 MADISON AVE. 29TH FLOOR
NEW YORK NY 10022

Annual Reports

Report Year Filed Date

2010	01/31/2010
2011	01/19/2011
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Detail by Entity Name

Florida Limited Liability Company

SPERIN, L.L.C

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Click the 'Search Now' button to determine if the 2013 Annual Report has been filed.

Filing Information

Document Number	L09000008201
FEI/EIN Number	270012725
Date Filed	01/26/2009
State	FL
Status	ACTIVE
Effective Date	01/26/2009

Principal Address

13410 S. SHORE BLVD.
WELLINGTON FL 33414

Mailing Address

555 MADISON AVENUE
29TH FLOOR
NEW YORK NY 10022

Registered Agent Name & Address

GALLE, CRAIG T
13501 SOUTH SHORE BLVD.
SUITE 103
WELLINGTON FL 33414 US

Manager/Member Detail

Name & Address

Title MGR

HIRSCH, NEIL
555 MADISON AVENUE 29TH FLOOR
NEW YORK NY 10022

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State of Florida, Department of State

From: "Mat Forrest" <mat@ballardfl.com>
Subject: RE: Letter of resignation
Date: June 8, 2012 12:41:23 PM EDT
To: "Neil Hirsch" <neilshirsch@aol.com>

Dear Neil,

Thank you Neil for your assistance and support. I will inform the rest of the board including Lou Jacobs, President. I will also work on removing you from our State incorporation documents.

We look forward to working with you again in the future and of course your voice as a Wellington resident and business owner will always be heard by our group.

Have a great summer,
Mat

-----Original Message-----

From: Neil Hirsch [mailto:neilshirsch@aol.com]
Sent: Friday, June 08, 2012 7:39 AM
To: Mat Forrest
Subject: Letter of resignation

Dear Mat,
Please accept this as my formal resignation as Director from the Wellington Equestrian Preserve Alliance.
Thank You
Neil S. Hirsch



A MESSAGE FROM SHERIFF RIC L. BRADSHAW

Law enforcement foundations are neither new nor unique. They go back at least to the 1960's. They are found in agencies large and small and in every geographic part of this great land of ours. They come out of the reality that good law enforcement is not cheap.

This reality almost universally translates into the fact that law enforcement budgets rarely keep up with the needs of an agency to continue to "serve and protect" at the highest levels possible and with the changes in law enforcement, particularly in costly technology. Within every challenge is an opportunity. Our opportunity can be maximized by people taking a deeper and more active interest in law enforcement, what it does, and what its needs are to do what it does.

Becoming involved in a law enforcement foundation is fascinating, exciting work and one that pays the dividends of knowing your leadership is both enhancing our ability to protect you and your neighbors better each year and that you are enhancing the protection and well-being of the fine men and women who deliver and support law enforcement services in this the largest county east of the Mississippi. We will provide you with every opportunity to learn about how this department works, be exposed to its many specialty units, see the reality of lab research and compare it to the television version, even ride with an officer if you so desire.

I urge you to read this brochure carefully and then contact Foundation Manager Bill Gralnick at either 561-681-4523 or GralnickW@PBSO.org.

*Thank you!
Ric L. Bradshaw, Sheriff*

FOUNDING BOARD OF DIRECTORS

Jane Forbes Clark
Carol Cohen
Thomas DeRita
Albert W. Gortz
Neil S. Hirsch
John S. Hundley
Lance Ivey
Drew Levine
Monica Manolas
Mark Mirkin
Dr. Harvey Montijo
Joel Pashcow
Michael Passeroff
Maurice D. Plough, Jr.
Robert Rawe II
David Scaff
Joseph D. Scarpa
Rick Seymour
Carlton Wade
*in formation

Major Daniel R. Smith, Commander, Countywide Operations
Jim Miller, Esq., Of Counsel
William A. Gralnick, Foundation Manager



Palm Beach County Sheriff's Office
2300 N. Jog Road
West Palm Beach, Florida 33411
(561) 681-4523
www.pbso.org

THE PALM BEACH COUNTY SHERIFF'S FOUNDATION



*Enhancing
the Mission*

of the Palm Beach County Sheriff's Office



AN OVERVIEW OF POTENTIAL GIVING OPPORTUNITIES



AGRICULTURAL UNIT

Nothing could be more true than the expression "looking for a needle in a hay stack" when the agricultural unit has to look for a perpetrator or stolen property out in the cane and corn fields in either the Glades or "the Rangeline." Specially notated signs and GPS coordination are particular needs. Monies to hold Homeland Security training for farmers and agricultural businesses on terrorist uses for agricultural products and appropriate methods of storage are needed.



MARINE UNIT

"Run for the hills—the dam's busted!" The problem is that there are no hills where we have a dam. It is projected that if we had a "Katrina" experience here and the dam at Lake Okeechobee broke that 40,000 families would be in the way of the wall of water with results impacting all of south Florida for years to come after the event. The Marine Unit needs a surplus of flat bottom boats for such an emergency as well as for use in patrolling areas a regular hull would be torn apart by. We need more of the very costly drug interdiction "cigarette boats," money for the enormous amounts of fuel they use, and of course the infrastructure to maintain them.



MOUNTED UNIT

A police horse costs approximately \$40,000, several months to train, and \$5,000 a year to maintain if it remains healthy. Currently the biggest need is a larger barn. In the face of a hurricane about a quarter of the horses need to be taken off site and boarded elsewhere. It is also easier for the trainers and groomers and healthier for the horses to all be housed in one, weather proof, enclosed barn.



CANINE UNIT

It costs approximately \$10,000 to purchase a speciality dog and approximately the same amount to train dog and handler.



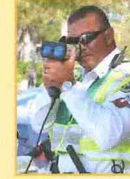
THE COURTHOUSE

The Courthouse is the largest division in PBSO. 190 individuals work to keep judges safe, courtrooms quiet and orderly, a constant flow of prisoners, many of whom are violent offenders, go from the prison bus to the courtroom and back. Then there are the hundreds and hundreds of people and staff personnel who pass through the front door and metal detectors every day. As one captain said, "At the courthouse everything is a routine. You're known for the one thing that goes wrong rather than the daily scores of things that go right."



AVIATION UNIT

That searchlight you see in the sky beaming down is from the bottom of the PBSO helicopters. These critical "birds" in the air are the eyes for mounted, K-9 and foot patrol officers in pursuit of the location of bad guys and light up the terrain to make capture safer for the deputies. Special tools and specially trained mechanics are required to keep these eyes in the sky safe and certified. Pilots too need special and continuous training. We have fixed wing aircraft requiring all the same attention for planes and pilots. Then there is the aviation fuel costs to keep them airborne.



TRAFFIC DIVISION

Ninety dedicated men and women make up the multiple units of the Traffic Division. These are the officers who go after aggressive, dangerous drivers. This is the division that encompasses the highly trained officers of the DUI unit protecting us from drunks behind the wheel. Traffic homicides, the stuff of television and print news, are invested by the Traffic Division. The Traffic Division does special enforcement events; it fields out the motorcycle unit out to make the roadways safe even when the heat index is over 100 day after day. Then there are the 400 unsung heroes of the Traffic Division, the 400 school crossing guards. No child has ever been injured at a school crossing where one of our guards was posted.



COMMUNITY RELATIONS

This is not your father's Palm Beach County. The size and complexion of this county has changed dramatically in the past twenty years. It is estimated that the students in the Palm Beach County Schools speak cumulatively over 70 languages representing most of the nations of the world. We need our officers professionally trained in the cultural norms and values of these new citizens. We need to be able to pay for translation and produce materials in at least the dominant languages of the county. We need to analyze who lives where so rather than receive broad-based training officers first can be schooled in the cultural values and norms of those who live in the districts to which they are assigned.

(A COMPREHENSIVE LIST OF GIVING OPPORTUNITIES IS AVAILABLE)

*The sheriff retains the right to place money in areas of critical need if your designated gift to a given unit is not currently needed. Consultation with the donor will occur before final decisions are made.



Bellissimo

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT ("Agreement") is made and entered into as of the ____ day of November, 2012, by and between Sperin, LLC, a Florida limited liability company ("**Seller**"), and Broadview Realty, LLC, a Florida limited liability company or its assigns (collectively, "**Purchaser**"). In consideration of the mutual covenants and promises set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties to this Agreement, the parties agree to the following terms and conditions:

1. **PURCHASE AND SALE.** Subject to the terms of this Agreement, Seller agrees to sell to Purchaser and Purchaser agrees to purchase from Seller (i) the real property and improvements located 13410 South Shore Boulevard, Wellington, Palm Beach County, Florida, consisting of 5.54 acres +/- acres with PCN 73-41-44-16-01-001-0010 and 73-41-44-16-01-001-0010 (the "**Property**") and (ii) the Restaurant equipment, catering equipment, furnishings, art and other items of personal property used by the restaurant to run the business as of the date of this Agreement (the "**Personal Property**"). It is the intention of the Seller and Purchaser that the term Property shall include all of the real properties used in the operation of the Player's Club including, the restaurant parcel with the building, the parking lot(s) and the outside patio areas.

2. **EFFECTIVE DATE.** If this Agreement is not executed and delivered, by each party to it, to all parties on or before November 16, 2012, at 5:00 p.m., eastern time, this Agreement shall, after that time, be null and void and of no further force and effect. Execution and delivery shall be defined as the receipt of the fully executed Agreement by the parties by means of the U.S. Mails, delivery by a nationally recognized overnight delivery service, hand delivery or facsimile transmission. The date of this Agreement, for purposes of performance, shall be the date when the last one of Seller or Purchaser has signed this Agreement, as stated on the signature page (the "**Effective Date**").

3. **CLOSING DATE.** Subject to other provisions of this Agreement for extension or termination, closing on the transaction described in this Agreement (the "**Closing**") shall be held at the offices of The Galle Law Group, P.A., 13501 South Shore Boulevard, Suite 103, Wellington, Florida 33414 (the "**Closing Agent**") within five (5) business days after the expiration of the Investigation Period (the "**Closing Date**").

4. **DEPOSIT.**

4.1 A deposit shall be required by Purchaser to secure the performance by Purchaser of Purchaser's obligations under this Agreement. The initial deposit shall be Twenty Five Thousand and No/100 Dollars (\$25,000.00), paid by Purchaser upon the execution of this Agreement, and held in an account with the Closing Agent. Upon the expiration of the Investigation Period, if the Agreement is not terminated by Purchaser, Purchaser shall be required to make a second deposit in the amount of Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00). The initial deposit and the second deposit shall collectively be referred to herein as the "Deposit".

5. **PURCHASE PRICE.**

5.1 The purchase price to be paid by Purchaser to Seller for the Property and Persona Property is Five Million Five Hundred Fifty Five Thousand and No/100 Dollars (\$5,550,000.00).

5.2 The Purchase Price shall be paid to Seller as follows:

\$25,000.00 initial deposit;

\$250,000.00 second deposit;

\$5,275,000.00 in cash at Closing, subject to prorations and adjustments as provided in this Agreement, to be paid by wire transfer;

~~\$5,550,000.00~~ Total Purchase Price.

6. **TITLE EVIDENCE.** Within **ten (10)** days following the Effective Date, the Closing Agent shall at Seller's cost deliver to Purchaser a title commitment for a new policy in favor of Purchaser. The title insurance commitment shall show Seller to be vested with good and marketable and insurable fee simple title to the Property, free and clear of all liens, encumbrances, restrictions, rights-of-way, easements and other matters affecting title, except the following (the "**Permitted Exceptions**"):

6.1 Ad valorem real estate taxes for 2012 and subsequent years;

6.2 All applicable zoning ordinances and regulations;

Title shall be deemed good, marketable and insurable only if Seller can, on Purchaser's behalf, obtain a commitment for an Owner's ALTA Form B Marketability Policy from Old Republic Title Insurance Company ["Title Insurer"], at standard rates, containing no exceptions other than those listed above.

7. **SURVEY.**

7.1 Within the time period for providing the title insurance commitment, Purchaser, at Purchaser's expense, shall obtain a survey (the "**Survey**") of the Property. The Survey shall:

7.1.1 meet the minimum technical standards of the Florida Board of Land Surveyors;

7.1.2 be certified to Purchaser, the Title Insurer, the Title Agent, and to

Purchaser's mortgage lender, if any;

7.1.3 be certified (or recertified) as of a date subsequent to the Effective Date;

7.1.4 set forth the total number of square feet and acres in the Property;

7.1.5 show the location of all improvements, utility and other lines; easements, either visible or recorded, and recording references of them.

7.2 If the Survey shall reflect any encroachments, overlaps, unrecorded easements or similar rights in third parties, or any other adverse matters not specifically provided for in this Agreement, then the same shall be deemed "title defects" as set forth in Section 8.

8. **TITLE DEFECTS.**

8.1 Purchaser shall have **five (5)** days from receipt of the owner's title insurance commitment within which to examine it. If Purchaser finds title to be defective, Purchaser shall, no later than the end of each such **five (5)** day examination period, notify Seller in writing specifying the title defect(s). If Purchaser fails to give Seller written notice of any title defect(s) before the expiration of each such **five (5)** day period, the defects shown in the title commitment shall be deemed to be waived as title objections to closing this transaction.

8.2 If Purchaser has given Seller timely written notice of defect(s) and the defect(s) render the title other than as represented in this Agreement, Seller shall use Seller's best efforts to cause such defects to be cured by the Closing Date.

8.3 If Seller does not eliminate such defects as of the Closing Date, or if any new "title defects" appear from the date of certification of the title commitment through the Closing Date, which Seller does not eliminate as of the Closing Date, Purchaser shall have the option to:

8.3.1 Close and accept the title "as is," without equitable reduction in the Purchase Price; in such event the Closing shall take place ten (10) days after notice of such election, or on the Closing Date, whichever is later; or

8.3.2 Cancel this Agreement and receive a full refund of the Deposit.

9. **INVESTIGATION PERIOD.**

9.1 During the Investigation Period, as defined below, Purchaser shall have the right to conduct, at Purchaser's expense, whatever reasonable investigations, analyses and studies of the Property that Purchaser may deem appropriate to satisfy Purchaser with regard the below items:

9.1.1 the permitted uses of and improvements to the Property under

applicable building and zoning ordinances and the present compliance or non-compliance with the same;

9.1.2 evidence of any hazardous waste or similar materials in, on, under or about the Property;

9.1.3 all existing contracts, agreements, leases and tenancies affecting the Property, if any; and

9.1.4 evidence of any wetland, muck, or other matters pertaining to the development of the Property.

9.2 If Purchaser is dissatisfied, for any reason and in Purchaser's exclusive and arbitrary judgment, with the result of Purchaser's investigations, then Purchaser may cancel this Agreement by notifying Seller of such cancellation on or before 5:00 p.m. on the twentieth (20th) business day after the Effective Date and receive the return of the Deposit (the "**Investigation Period**"). If Purchaser does not timely cancel this Agreement as set forth in this paragraph, the Deposit shall become non-refundable and at-risk of loss to Purchaser in the event that Purchaser does not close.

9.3 Notwithstanding any provisions in this Agreement to the contrary, Purchaser does and shall indemnify and hold harmless Seller, its agents, employees, successors and assigns, against all losses, claims, damages, liability, attorneys' and accountants' fees and costs of litigation and all other expenses related to, growing out of, or arising from the investigation of or entry upon the Property, or other acts undertaken by Purchaser, its agents, employees or assigns, under this Agreement. If Purchaser does not close on the purchase of the Property under this Agreement, it shall return the Property to the condition in which it existed prior to any investigations undertaken by Purchaser, its agents, employees and assigns pursuant to this Agreement.

10. **SELLER'S REPRESENTATIONS, WARRANTIES AND COVENANTS.**

Seller represents and warrants to Purchaser and covenants and agrees with Purchaser as follows:

10.1 Seller has not entered into any contracts, subcontracts, arrangements, licenses, concessions, easements, or other agreements, either recorded or unrecorded, written or oral, affecting all or any portion of the Property, or the use of it.

10.2 To the best of Seller's knowledge, there are no (i) existing or pending improvement liens affecting the Property; (ii) violations of building codes and/or zoning ordinances or other governmental or regulatory laws, ordinances, regulations, orders or requirements affecting the Property; (iii) existing, pending or threatened lawsuits or appeals of prior lawsuits affecting the Property; or (iv) existing, pending or threatened condemnation proceedings affecting the Property;

10.3 Seller is vested with good and marketable and insurable fee simple title to the Property subject only to the Permitted Exceptions;

10.4 Seller shall comply prior to Closing with all laws, rules, regulations, and ordinances of all governmental authorities having jurisdiction over the Property;

10.5 To the best of Seller's knowledge, Seller has not done nor allowed anything which could cause toxic or hazardous materials or waste to be present in, on or about the Property, and has no knowledge of any such materials or waste being or ever having been in, on, or about the Property or adjacent properties; No toxic or hazardous materials or wastes have been, are or shall be located or stored on or under the Property or on or under property adjacent to it, which have or will have an adverse effect upon the use, development and/or value of the Property; all trash, if any, located on the Property shall be removed prior to the Closing;

10.6 All impact fees, use fees and assessments relating to the Property have been paid and the benefits of them are assignable to Purchaser without additional cost to Purchaser;

10.7 The Property is now zoned under a P.U.D. classification;

10.8 There are no agreements currently in effect which restrict the sale of the Property;

10.9 Seller has the right, power and authority to execute and deliver this Agreement and to consummate the transactions contemplated by it;

10.10 No commitments or agreements have been or will be made to any governmental authority, utility company, school board, church or other religious body, any homeowners or homeowners' association, or any other organization, group or individual, relating to the Property which would impose an obligation upon Purchaser to make any contributions or dedications of money or land to construct, install or maintain any improvements of a public or private nature on or off the Property, or otherwise impose liability on Purchaser; and

10.11 At all times during the term of this Agreement and as of Closing, all of Seller's representations, warranties and covenants in this Agreement shall be true and correct. The Seller's representations set forth in paragraph 10 shall survive Closing.

11. CONDITIONS PRECEDENT.

11.1 An express condition precedent to Purchaser's obligation to close this transaction are the truth and correctness of all of Seller's representations and warranties and the fulfillment of all of Seller's covenants at all times during the term of this Agreement and as of Closing, and no inquiry, analysis or examination made by Purchaser (or the results of them) shall reduce, limit or otherwise affect said representations, warranties and covenants.

12. **DEFAULT BY SELLER.** If any of Seller's representations and warranties are not true and correct or Seller's covenants are not fulfilled or all other conditions precedent are not met as of Closing (or earlier specified date, if any), or Seller fails to perform any of the terms and conditions of this Agreement or is otherwise in default under this Agreement, then Purchaser, at Purchaser's sole option, may elect to:

12.1 Waive the default or failure and close "as is" without equitable reduction in the Purchase Price; or

12.2 Can this Agreement by written notice to Seller given on or before the Closing Date, in which the Escrow Agent shall return the Deposit to Purchaser; upon such return, both parties shall be released from all further obligations under this Agreement.

13. **DEFAULT BY PURCHASER.** In the event of the failure or refusal of Purchaser to close this transaction, without fault on Seller's part and without failure of title or any conditions precedent to Purchaser's obligations under this Agreement, Seller's remedies shall include the right to retain the Deposit.

14. **PRORATIONS.** Real estate and personal property taxes, insurance, rents, interest, cost and revenues and all other proratable items shall be prorated as of the Closing Date. In the event the taxes for the year of Closing are unknown, the tax proration will be based upon such taxes for the prior year or the millage rate as announced at day of Closing, and the thenlatest tax appraiser's assessment of the Property and, at the request of either party, such taxes for the year of Closing shall be reprorated and adjusted when the tax bill for the year of Closing is received and the actual amount of taxes is known.

15. **IMPROVEMENT LIENS.** Certified, confirmed or ratified liens for governmental improvements or special assessments as of the Closing Date, if any, shall be paid in full by Seller, and pending liens for governmental improvements or special assessments as of the Closing Date shall be assumed by Purchaser, provided that where the improvement has been substantially completed as of the Closing Date, such pending lien shall be considered certified.

16. **CLOSING COSTS; DOCUMENTARY STAMPS AND INTANGIBLE TAXES.** At the Closing, Seller shall pay (i) the documentary stamps due on the warranty deed of conveyance and (ii) the cost of the title insurance premium issued by the Closing Agent. Purchaser shall pay the cost of the survey. Each party shall bear the recording costs of any instruments received by that party, except that Seller shall pay the recording costs on documents necessary to clear title.

17. **CLOSING.**

17.1 Seller shall convey title to the Property by good and sufficient Statutory Warranty Deed subject only to the Permitted Exceptions. Seller shall also deliver to Purchaser at the Closing:

17.1.1 a mechanic's lien affidavit, to the title insurer and Purchaser, in form acceptable to the title insurer to delete the standard exception relating to such liens in the owner's title insurance policy;

17.1.2 an affidavit, to the title insurer and Purchaser, that there are no unrecorded easements and that Seller has exclusive possession of the Property, except for the rights of tenants hereafter approved in writing by Purchaser and that Seller has done nothing to change the state of facts shown on the Survey, in form acceptable to the Title Insurer to delete the standard exceptions relating to such matters in the owner's title insurance policy;

17.1.3 a gap affidavit and indemnification agreement acceptable to Title Insurer for purposes of deleting the "gap" from the title commitment and policy;

17.1.4 instruments necessary to clear title, if any, including those required

to remove standard exceptions from the title policy;

17.1.5 a non-foreign certificate and other documentation as may be appropriate and satisfactory to Purchaser to meet the non-withholding requirements under FIRPTA and any other federal statute or regulations (or, in the alternative, Seller shall cooperate with Purchaser in the withholding of funds pursuant to FIRPTA regulations);

17.2 Seller and Purchaser shall each execute such other documents as are reasonably necessary to consummate this transaction.

18. **BROKERS.** Seller and Purchaser acknowledge and agree that neither one has used a broker to procure, represent or assist in this transaction. Purchaser is not obligated and will have no liability whatsoever to pay any brokerage commissions.

19. **ASSIGNABILITY.** This Agreement is freely assignable by Purchaser. In the event of an assignment by Purchaser, Purchaser shall be not be released from its obligations under this Agreement in the event that the assignee breaches any of the terms or conditions of this Agreement.

20. **INSPECTIONS.** Purchaser, and Purchaser's agents and contractors, shall have the right during the term of this Agreement to enter upon the Property at all reasonable times for purposes of inspection and making tests and studies. Purchaser hereby agrees to and does indemnify, defend and hold Seller harmless from all liabilities, damages, claims, costs, or expenses whatsoever (including reasonable attorneys' fees and court costs) for bodily injury, death, or property damage resulting from any such inspection, test or study. The provisions of this Section shall survive the Closing or the termination or cancellation of this Agreement.

21. **NOTICES.** Any notices required or permitted to be given under this Agreement shall be delivered by hand, mailed by certified or registered mail, return receipt requested, in a postage prepaid envelope, or delivered by a nationally recognized overnight delivery service, and addressed as described below; notices shall be deemed effective only upon receipt or refusal of delivery.

Notices to Seller:

Sperin, LLC
Attn.: Neil S. Hirsch
13410 South Shore Boulevard
Wellington, Florida 33414

Notices to Purchaser:

Broadview Realty, LLC
Attn: Mark J. Bellissimo, Manager
14440 Pierson Road
Wellington, Florida 33414

Notices to Closing Agent:

The Galle Law Group, P.A.
Attn: Craig T. Galle, Esq.

13501 South Shore Boulevard

Suite 103

Wellington, Florida 33414

Tel: (561) 798-1708

Fax: (561) 798-1709

Email: pololawyer@aol.com

22. **RISK OF LOSS.**

22.1 The Property shall be conveyed to Purchaser in the same condition as on the date of this Agreement, ordinary wear and tear excepted, free of all tenancies or occupancies.

22.2 Upon receipt of an offer or any notice or communications from any governmental or quasi-governmental body seeking to take under its power of eminent domain all or any portion of the subject property, Seller shall promptly notify Purchaser of the receipt of same and shall send such communication, or a copy of it, to Purchaser. Upon receipt of such notice, Purchaser shall have the right to rescind this Agreement by delivery of written notice to Seller within thirty (30) days of Purchaser's receipt of the communication from Seller. In the event Purchaser elects not to rescind, then (i) the proceeds of such condemnation of sale in lieu of condemnation shall be retained by Seller and the purchase price to be paid to Seller under this Agreement shall be reduced by an equal amount and (ii) the property so taken or sold shall not be subject to this Agreement. Seller and Purchaser agree to cooperate with each other to obtain the highest and best price for the condemned property.

23. **MISCELLANEOUS.**

23.1 This Agreement has been negotiated and executed in Florida; it shall be construed and governed in accordance with the laws of the State of Florida, without application of conflicts of laws principles.

23.2 In the event any term or provision of this Agreement is determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or be construed as deleted as such authority determines, and the remainder of this Agreement shall be construed to be in full force and effect.

23.3 In the event of any litigation between the parties under this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees. Wherever provision is made in this Agreement for "attorneys' fees," such term shall be deemed to include accountants' and attorneys' fees and court costs, whether or not litigation is commenced, including those for appellate proceedings and for paralegals and similar persons.

23.4 Each party has participated fully in the negotiation and preparation of this Agreement with full benefit of counsel. Accordingly, this Agreement shall not be more strictly construed against either party.

23.5 Whenever used in this Agreement, the singular shall include the plural, the plural shall include the singular, any gender shall include every other and all genders, and captions and paragraph headings shall be disregarded.

23.6 The provisions in this Agreement are for the convenience of reference only and shall not be deemed to alter any provision of this Agreement.

23.7 Any reference in this Agreement to time periods less than five (5) days shall, in the computation thereof, exclude Saturdays, Sundays, and legal holidays; any time period provided for in this Agreement which shall end on a Saturday, Sunday or legal holiday shall extend to 5:00 p.m. of the next full business day.

23.8 This Agreement constitutes the entire agreement between the parties and may not be changed, altered or modified except by an instrument in writing signed by the party against whom enforcement of such change would be sought.

23.9 All references in this Agreement to exhibits, schedules, paragraphs, subparagraphs and sections refer to the respective subdivisions of this Agreement, unless the reference expressly identifies another document.

23.10 All of the terms of this Agreement, including but not limited to the representations, warranties and covenants of Seller, shall be binding upon and shall inure to the benefit of the parties to this Agreement and their respective successors and assigns.

23.11 Typewritten or handwritten provisions which are inserted in or attached to this Agreement as addenda or riders shall control all printed or pretyped provisions of this Agreement with which they may be in conflict.

23.12 All covenants, representations, agreements and warranties of Seller in this Agreement, all remedies related to them, and the provisions of this section shall survive the Closing or the termination or cancellation of this Agreement.

23.13 Time is of the essence as to all material terms of this Agreement.

25. **WAIVER OF JURY TRIAL** Seller and Purchaser mutually agree that they waive all rights to a trial by jury in the event of any dispute or court action arising from, growing out of, or related to, this Agreement. The parties acknowledge that this waiver is a significant consideration to Purchaser to enter into this Agreement.

26. **CONFIDENTIALITY** Both Seller and Purchaser agree to keep the existence and terms of this Agreement strictly confidential, neither of which shall be disclosed directly or indirectly to any third parties except professionals, consultants and agents who provide services in connection with the purchase and sale of the Property.

EXECUTED as of the date first written above in several counterparts, each of which shall be deemed an original, but all of which constitute only one agreement.

Signed, sealed and delivered

in the presence of:

PURCHASER:

BROADVIEW REALTY, LLC

By: Mark J. Bellissimo
Name: Mark J. Bellissimo, Manager

SELLER:

SPERIN, LLC

By: _____
Name: Neil S. Hirsch

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT ("Agreement") is made and entered into as of the ____ day of November, 2012, and is by and between Sperin, L.L.C., a Florida limited liability company with an office for the transaction of business at 13410 South Shore Boulevard, Wellington FL 33414 ("Seller"), and Solar Sportsystems, Inc., a New York corporation authorized to do business in Florida with an office for the transaction of business at 40 Fountain Plaza, Buffalo, New York 14202 ("Purchaser").

IN CONSIDERATION of the mutual covenants and promises set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties to this Agreement, the parties agree to the following terms and conditions:

1. PURCHASE AND SALE. Subject to the terms of this Agreement, Seller agrees to sell to Purchaser and Purchaser agrees to purchase from Seller (i) the real property and improvements located 13410 South Shore Boulevard, Wellington, Palm Beach County, Florida, consisting of 5.54 acres +/- acres with PCN 73-41-44-16-01-001-0010 and 73-41-44-16-01-001-0020, as is more fully shown in Schedule A, annexed (the "Real Property"), and (ii) the restaurant equipment, catering equipment, furnishings, art and other items of personal property used by the restaurant to run the business as of the date of this Agreement specifically excluding the State of Florida 4 COP liquor license and the Paul Brown artwork (the "Personal Property"). The parties agree to compile a list of all such Personal Property and incorporate it into this Agreement as Schedule B in a written schedule signed and dated by both parties hereto, on or before the expiration of the hereinafter defined Inspection Period (the "Personal Property Schedule"). All of the Real Property and Personal Property shall be referred to herein as the "Premises". It is the intention of the Seller and Purchaser that the Premises shall include all of the Real Property used in the operation of the Player's Club Restaurant including, the restaurant parcel with the building, the parking lot(s) and the outside patio areas.

2. EFFECTIVE DATE. If this Agreement is not executed and delivered, by each party to it, to all parties on or before November 20, 2012, at 4:00 p.m., eastern standard time, this Agreement shall, after that time, be null and void and of no further force and effect. Execution and delivery shall be defined as the receipt of the fully executed Agreement by the parties by means of the U.S. Mails, delivery by a nationally recognized overnight delivery service, hand delivery or facsimile transmission. The date of this Agreement, for purposes of performance, shall be the date when the last one of Seller or Purchaser has signed this Agreement, as stated on the signature page (the "Effective Date").

3. CLOSING DATE. Subject to other provisions of this Agreement for extension or termination, closing on the transaction described in this Agreement (the "Closing") shall be held at the offices of the Seller's attorney, Donald P. Dufresne, Esq., in Palm

Beach County, Florida (the "Closing Agent") on or before December 20, 2012 (the "Closing Date").

4. DEPOSIT. A deposit shall be required by Purchaser to secure the performance by Purchaser of Purchaser's obligations under this Agreement. The initial deposit shall be Twenty Five Thousand and No/100 Dollars (\$25,000.00), paid by Purchaser upon the execution of this Agreement, and held in an account with the Closing Agent. Upon the expiration of the Investigation Period, if the Agreement is not terminated by Purchaser, Purchaser shall be required to make a second deposit in the amount of Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00). The initial deposit and the second deposit shall collectively be referred to herein as the "Deposit".

5. PURCHASE PRICE. The purchase price to be paid by Purchaser to Seller for the Real Property and Personal Property is Six Million and No/100 Dollars (\$6,000,000.00), payable as follows:

\$25,000.00	initial deposit;
\$250,000.00	second deposit;
\$5,725,000.00	in cash at Closing, subject to prorations and adjustments as provided in this Agreement, to be paid by wire transfer
<u>\$6,000,000.00</u>	Total Purchase Price.

6. TITLE EVIDENCE. Within ten (10) days following the Effective Date, the Closing Agent shall at Seller's cost deliver to Purchaser a title commitment for a new policy in favor of Purchaser. The title insurance commitment shall show Seller to be vested with good and marketable and insurable fee simple title to the Real Property, free and clear of all liens, encumbrances, restrictions, rights-of-way, easements and other matters affecting title, except the following (the "Permitted Exceptions"):

- 6.1 Ad valorem real estate taxes for 2012 and subsequent years;
- 6.2 All applicable zoning ordinances and regulations;
- 6.3 All easements and rights of way for access and utilities which service the improvements on the Real Property provided that the improvements as now situate do not encroach thereon, other than paving and concrete for parking, driveways, and sidewalks.

Title to the Real Property shall be deemed good, marketable and insurable only if Seller can, on Purchaser's behalf, obtain a commitment for an Owner's ALTA Form B Marketability Policy from Old Republic Title Insurance Company ("Title Insurer") insuring the Purchaser, at standard rates, containing no exceptions other than those listed above, unless waived by Purchaser

7. SURVEY.

7.1 Within the time period for providing the title insurance commitment, Purchaser, at Purchaser's expense, shall obtain a survey (the "Survey") of the Property.

The Survey shall:

7.1.1 meet the minimum technical standards of the Florida Board of Land Surveyors;

7.1.2 be certified to Purchaser, the Title Insurer, the Title Agent, and to Purchaser's mortgage lender, if any;

7.1.3 be certified (or recertified) as of a date subsequent to the Effective Date;

7.1.4 set forth the total number of square feet and acres in the Real Property;

7.1.5 show the location of all improvements, utility and other lines; easements, either visible or recorded, and recording references of them.

7.2 If the Survey shall reflect any encroachments, overlaps, unrecorded easements or similar rights in third parties, or any other adverse matters not specifically provided for in this Agreement, then the same shall be deemed "Title Defects" as set forth in Section 8.

8. TITLE DEFECTS.

8.1 Purchaser shall have five (5) days from receipt of the owner's title insurance commitment within which to examine it. If Purchaser finds title to be defective, Purchaser shall, no later than the end of such five (5) day examination period, notify Seller in writing specifying the title defect(s) or objections to title. If Purchaser fails to give Seller written notice of any title defect(s) or objections to title before the expiration of such five (5) day period, the defects shown in the title commitment shall be deemed to be waived as title objections to closing this transaction.

8.2 If Purchaser has given Seller timely written notice of defect(s) and the defect(s) render the title other than as represented in this Agreement, Seller shall use Seller's best efforts to cause such defects to be cured by the Closing Date.

8.3 If Seller does not eliminate such defects as of the Closing Date, or if any new "title defects" appear from the date of certification of the title commitment through the Closing Date, which Seller does not eliminate as of the Closing Date, Purchaser shall have the option to:

8.3.1 Close and accept the title "as is," without equitable reduction in the Purchase Price; in such event the Closing shall take place ten (10) days after notice of such election, or on the Closing Date, whichever is later; or

8.3.2 Cancel this Agreement and receive a full refund of the Deposit.

9. INVESTIGATION PERIOD

9.1 During the Investigation Period, as defined below, Purchaser shall have the right to conduct, at Purchaser's expense, whatever reasonable investigations, analyses and studies of the Real Property and the Personal Property that Purchaser may deem appropriate to satisfy Purchaser with regard the below items:

9.1.1 the permitted uses of and improvements to the Real Property under applicable building and zoning ordinances and the present compliance or non-compliance with the same;

9.1.2 evidence of any hazardous waste or similar materials in, on, under or about the Real Property;

9.1.3 all existing contracts, agreements, leases and tenancies affecting the Real Property and/or the Personal property, if any; and

9.1.4 evidence of any wetland, muck, environmentally protected areas, or other matters pertaining to the development of the Real Property.

9.2 If Purchaser is dissatisfied. for any reason and in Purchaser's exclusive and sole judgment with the result of Purchaser's investigations, or if Purchaser and Seller have not agreed upon the Personal Property Schedule in writing, then Purchaser may cancel this Agreement by notifying Seller of such cancellation on or before 5:00 p.m., December 11, 2012 and receive the return of the Deposit (the "Investigation Period"). If Purchaser does not timely cancel this Agreement as set forth in this paragraph, the Deposit shall become non-refundable and at-risk of loss to Purchaser in the event that Purchaser does not close, other than if the Closing does not occur due to the default, failure, or inability to perform this Agreement by Seller.

9.3 Notwithstanding any provisions in this Agreement to the contrary, Purchaser does and shall indemnify and hold harmless Seller, its agents, employees, successors and assigns, against all losses, claims, damages, liability, attorneys' and accountants' fees and costs of litigation and all other expenses related to, growing out of, or arising from the investigation of or entry upon the Real Property and/or examination of the Personal Property, or other acts undertaken by Purchaser, its agents, employees or assigns, under this Agreement, except for those occurring solely because Purchaser or its agents, employees and/or assigns discovered an illegal condition on, in, or about the Real Property or the Personal Property which requires Purchaser or its agents, employees and/or assigns to report the same to any governmental authorities, agencies, or instrumentalities. If Purchaser does not close on the purchase of the Real Property and the Personal Property under this Agreement, it shall return the Real Property and Personal Property to the condition in which they existed prior to any investigations undertaken by Purchaser, its agents, employees and assigns pursuant to this Agreement.

9.4 All such investigations shall be conducted in such a manner so as not to disturb, disrupt or affect the ongoing business operation of the Seller.

10. SELLER'S WARRANTIES, REPRESENTATIONS AND COVENANTS.

Seller represents and warrants to Purchaser and covenants and agrees with Purchaser as follows:

10.1 Seller has not entered into any contracts, subcontracts. Arrangements, licenses, concessions, easements, or other agreements, either recorded or unrecorded, written or oral, affecting all or any portion of the Real Property or the Personal Property, or the use of it, other than those that Seller provides to Purchaser within 5 business days of the Effective Date.

10.2 To the best of Seller's knowledge, there are no (i) existing or pending improvement liens affecting the Real Property; (ii) violations of building codes and/or zoning ordinances or other governmental or regulatory laws, ordinances, regulations, orders or requirements affecting the Real Property; (iii) existing, pending or threatened lawsuits or appeals of prior lawsuits affecting the Real Property or the Personal Property; (iv) existing, pending or threatened condemnation proceedings affecting the Real Property; or (v) existing liens or encumbrances affecting the Personal Property, other than those which will be terminated by Seller on or before Closing.

10.3 Seller is vested with good and marketable and insurable fee simple title to the Real Property subject only to the Permitted Exceptions, and good and marketable title to the Personal Property, which shall be free and clear of all liens and encumbrances as of the Closing;

10.4 Seller shall comply prior to Closing with all laws, rules, regulations, and ordinances of all governmental authorities having jurisdiction over the Real Property and the Personal Property;

10.5 To the best of Seller's knowledge, Seller has not done nor allowed anything which could cause toxic or hazardous materials or waste to be present in, on or about the Real Property, and has no knowledge of any such materials or waste being or ever having been in, on, or about the Real Property or adjacent properties: No toxic or hazardous materials or wastes have been, are or shall be located or stored on or under the Real Property or on or under property adjacent to it, which have or will have an adverse effect upon the use, development and/or value of the Real Property; all trash, if any, located on the Real Property shall be removed prior to the Closing;

10.6 All impact fees, use fees and assessments relating to the Real Property have been paid and the benefits of them are assignable to Purchaser without additional cost to Purchaser;

10.7 The Property is now zoned under a P.U.D. classification;

10.8 Other than any which will be terminated on or before Closing, there are no agreements currently in effect which restrict the sale of the Real Property or of the Personal Property;

10.9 Seller has the right, power and authority to execute and deliver this Agreement and to consummate the transactions contemplated by it;

10.10 No commitments or agreements have been or will be made to any governmental authority, utility company, school board, church or other religious body, any homeowners or homeowners' association, or any other organization, group or individual, relating to the Real Property or the Personal Property which would impose an obligation upon Purchaser to make any contributions or dedications of money or land to construct, install or maintain any improvements of a public or private nature on or off the Real Property, or otherwise impose liability on Purchaser; and

10.11 At all times during the term of this Agreement and as of Closing, all of Seller's representations, warranties and covenants in this Agreement shall be true and correct, and shall survive Closing.

11. CONDITIONS PRECEDENT

11.1 An express condition precedent to Purchaser's obligation to close this transaction are the truth and correctness of all of Seller's representations and warranties and the fulfillment of all of Seller's covenants at all times during the term of this Agreement and as of Closing, and no inquiry, analysis or examination made by Purchaser (or the results of them) shall reduce, limit or otherwise affect said representations, warranties and covenants.

11.2 Lease. An express condition precedent to Seller's obligation to close this transaction is the execution of a lease for the Premises by either the Seller or an entity controlled by the Seller containing terms and conditions acceptable to Seller in Seller's sole discretion.

11.3 Allocation. An express condition precedent to Seller's obligation to close this transaction is the agreement of Purchaser and Seller to the allocation of the Purchase Price between the Real Property and the Personal Property. In the event the Personal Property is owned by another entity, then Seller shall cause such entity to execute and deliver a Bill of Sale for the Personal Property and any other documentation reasonably required to complete this transaction.

12. DEFAULT OF SELLER. If any of Seller's representations and warranties are not true and correct or Seller's covenants are not fulfilled or all other conditions precedent are not met as of Closing (or earlier specified date, if any), or Seller fails to perform any of the terms and conditions of this Agreement or is otherwise in default under

this Agreement, then Purchaser, at Purchaser's sole option, may elect to:

12.1 Waive the default or failure and close "as is" without equitable reduction in the Purchase Price; or

12.2 Cancel this Agreement by written notice to Seller given on or before the Closing Date, in which event Seller shall cause Closing Agent to return the Deposit to Purchaser; upon such return, both parties shall be released from all further obligations under this Agreement.

13. DEFAULT BY PURCHASER. In the event of the failure or refusal of Purchaser to close this transaction, without fault on Seller's part and without failure of title or any conditions precedent to Purchaser's obligations under this Agreement, Seller's sole remedy shall be to retain the Deposit.

14. PRORATIONS. Real estate and personal property taxes, insurance, rents, interest, cost and revenues and all other pro-ratable items shall be pro-rated as of the Closing Date. In the event the taxes for the year of Closing are unknown, the tax pro-ration will be based upon such taxes for the prior year or the millage rate as announced at day of Closing, and the then latest tax appraiser's assessment of the Real Property and, at the request of either party, such taxes for the year of Closing shall be re-prorated and adjusted when the tax bill for the year of Closing is received and the actual amount of taxes is known. This provision shall survive Closing.

15. IMPROVEMENT LIENS. Certified, confirmed or ratified liens for governmental improvements or special assessments as of the Closing Date, if any, shall be paid in full by Seller, and pending liens for governmental improvements or special assessments as of the Closing Date shall be assumed by Purchaser, provided that where the improvement has been substantially completed as of the Closing Date, such pending lien shall be considered certified.

16. CLOSING COSTS AND DOCUMENTARY STAMPS. At the Closing, Seller shall pay (i) the documentary stamps due on the warranty deed of conveyance, and (ii) the cost of the title insurance premium issued by the Closing Agent. Purchaser shall pay the cost of the Survey. Each party shall bear the recording costs of any instruments received by that party, except that Seller shall pay the recording costs on documents necessary to clear title.

17. CLOSING.

17.1 Seller shall convey title to the Real Property by good and sufficient Statutory Warranty Deed subject only to the Permitted Exceptions and shall convey title to the Personal Property by bill of Sale with warranty of title, free and clear of all liens and encumbrances. Seller shall also deliver to Purchaser at the Closing:

17.1.1 a mechanic's lien affidavit, to the title insurer and Purchaser, in form acceptable to the title insurer to delete the standard exception relating to such liens in the owner's title insurance policy;

17.1.2 an affidavit, to the title insurer and Purchaser, that there are no unrecorded easements and that Seller has exclusive possession of the Property, except for the rights of tenants hereafter approved by Purchaser and that Seller has done nothing to change the state of facts shown on the Survey, in form acceptable to the Title Insurer to delete the standard exceptions relating to such matters in the owner's title insurance policy;

17.1.3 a gap affidavit and indemnification agreement acceptable to Title Insurer for purposes of deleting the "gap" from the title commitment and policy to remove standard exceptions from the title policy;

17.1.5 a non-foreign certificate and other documentation as may be appropriate and satisfactory to Purchaser to meet the non-withholding requirements under FIRPTA and any other federal statute or regulations (or, in the alternative, Seller shall cooperate with Purchaser in the withholding of funds pursuant to FIRPTA regulations);

17.2 Seller and Purchaser shall each execute such other documents as are reasonably necessary to consummate this transaction or as may be required by the Title Insurer.

18. BROKERS. Seller and Purchaser acknowledge and agree that neither one has used a broker to procure, represent or assist in this transaction. Neither Seller nor Purchaser shall be obligated nor have any liability whatsoever to pay any brokerage commissions and the parties hereby agree to indemnify and hold each other harmless in the event of a claim for a brokerage fee.

19. ASSIGNMENT. This Agreement is not assignable by Purchaser without the prior written consent of Seller except to an entity owned or controlled by Purchaser. In the event of an assignment by Purchaser, Purchaser shall not be released from its obligations under this Agreement in the event that the assignee breaches any of the terms or conditions of this Agreement.

20. NOTICES. Any notices required or permitted to be given under this Agreement shall be delivered by hand, mailed by certified or registered mail, return receipt requested, in a postage prepaid envelope, or delivered by a nationally recognized overnight delivery service, and addressed as described below:

If to Seller:

Sperin, L.L.C.
Attn.: Neil S. Hirsch

13410 South Shore Boulevard Wellington, Florida 33414

with a copy to:

Donald P. Dufresne, Esq.
Greenspoon Marder, P.A.
250 S. Australian Avenue, Suite 700
West Palm Beach, Florida 33401

If to Purchaser:

Solar Sportsystems, Inc.
Attn: President
40 Fountain Plaza Attn:
Buffalo, NY 14202

With a copy to:
Solar Sportsystems, Inc.
General Counsel
40 Fountain Plaza
Buffalo, New York 14202

21. RISK OF LOSS.

21.1 The Real Property and the Personal Property shall be conveyed to Purchaser in the same condition as on the date of this Agreement, ordinary wear and tear excepted, free of all liens, encumbrances, tenancies or occupancies, excepting only the Permitted Exceptions.

21.2 Upon receipt of an offer or any notice or communications from any governmental or quasi-governmental body seeking to take under its power of eminent domain all or any portion of the Real Property, Seller shall promptly notify Purchaser of the receipt of same and shall send such communication, or a copy of it, to Purchaser. Upon receipt of such notice, Purchaser shall have the right to rescind this Agreement by delivery of written notice to Seller within thirty (30) days of Purchaser's receipt of the communication from Seller. In the event that Purchaser elects to rescind, the Seller shall cause the Escrow Agent to refund the entire Deposit, notwithstanding that it may have become "non-refundable" hereunder. In the event Purchaser elects not to rescind, then (i) the proceeds of such condemnation or sale in lieu of condemnation shall be retained by Seller and the purchase price to be paid to Seller under this Agreement shall be reduced by an equal amount, and (ii) the portion of the Real Property so taken or sold shall not be subject to this Agreement. Seller and Purchaser agree to cooperate with each other to obtain the highest and best price for the condemned property.

22. MISCELLANEOUS.

22.1 This Agreement has been negotiated and executed in the State of Florida: it shall be construed and governed in accordance with the laws of the State of Florida, without application of conflicts of laws principles. The agreed upon venue for any dispute arising out of this Agreement shall be in the State courts located in Palm Beach County, Florida.

22.2 In the event any term or provision of this Agreement is determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or be construed as deleted as such authority determines, and the remainder of this Agreement shall be construed to be in full force and effect.

22.3 In the event of any litigation between the parties under this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees. Wherever provision is made in this Agreement for "attorneys' fees," such term shall be deemed to include accountants' and attorneys' fees and court costs, whether or not litigation is commenced, including those for appellate proceedings and for paralegals and similar persons.

22.4 Each party has participated fully in the negotiation and preparation of this Agreement with full benefit of counsel. Accordingly, this Agreement shall not be more strictly construed against either party.

22.5 Whenever used in this Agreement, the singular shall include the plural, the plural shall include the singular, any gender shall include every other and all genders, and captions and paragraph headings shall be disregarded.

22.6 The captions in this Agreement are for the convenience of reference only and shall not be deemed to alter any provision of this Agreement.

22.7 Any reference in this Agreement to time periods less than five (5) days shall, in the computation thereof, exclude Saturdays, Sundays, and legal holidays; any time period provided for in this Agreement which shall end on a Saturday, Sunday or legal holiday shall extend to 5:00 p.m. of the next full business day.

22.8 This Agreement constitutes the entire agreement between the parties and may not be changed, altered or modified except by an instrument in writing signed by the party against whom enforcement of such change would be sought.

22.9 All references in this Agreement to exhibits, schedules, paragraphs, subparagraphs and sections refer to the respective subdivisions of this Agreement, unless the reference expressly identifies another document.

22.10 All of the terms of this Agreement, including but not limited to the representations, warranties and covenants of Seller, shall be binding upon and shall inure to the benefit of the parties to this Agreement and their respective successors and assigns.

22.11 All covenants, representations, agreements and warranties of Seller in this Agreement, all remedies related to them, and the provisions of this section shall survive the Closing or the termination or cancellation of this Agreement.

22.12 Time is of the essence as to all material terms of this Agreement.

23. BULK SALE. Seller and Purchaser hereby agree that notwithstanding the fact that this transaction involves the sale of substantially all of the assets of Seller that this transaction shall not be deemed a "Bulk Sale" for any purpose. Notwithstanding that the parties do not intend this as a bulk sale, the principal of the Seller, Neil Hirsch, is joining in the execution of this Agreement in his personal and individual capacity, thereby agreeing to indemnify and hold the Purchaser, and its officers, directors, shareholders, employees, successors and assigns, and the officers, directors, employees, and owners of such assignees, harmless from all transferee tax liability, including but not limited to, all penalties, interest, costs and expenses; including but not limited to the reasonable legal fees, court costs and disbursements, arising for the failure of the Seller or the operating entity to which Seller leased or now leases the Real Property (the "Operating Entity"), to timely file and to pay all income taxes, sales taxes, use taxes, personal property taxes, intangible taxes, franchise taxes, excise taxes and other taxes of any kind or nature which ever was or is now required thereby, with the proper taxing authorities having jurisdiction over Seller and those with jurisdiction over the Operating entity, and this indemnification shall survive and be enforceable from and after the Closing.

24. WAIVER OF JURY TRIAL. Seller and Purchaser mutually agree that they waive all rights to a trial by jury in the event of any dispute or court action arising from, growing out of, or related to, this Agreement. The parties acknowledge that this waiver is a significant consideration to Purchaser to enter into this Agreement.

25. CONFIDENTIALITY. Both Seller and Purchaser agree to keep the existence and terms of this Agreement strictly confidential. Neither of which shall be disclosed directly or indirectly to any third parties except professionals, consultants and agents who provide services in connection with the purchase and sale of the Real Property and/or the Personal Property.

26. COUNTERPARTS. This Agreement may be several executed in counterparts, each of which shall be deemed an original. but all of which together constituting only one binding agreement between the parties.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as and for the binding act of the entity as to which they are signing, effective the date and year first above written.

PURCHASER:
SOLAR SPORTSYSTEMS, INC.

By _____
Name: _____
Title: _____

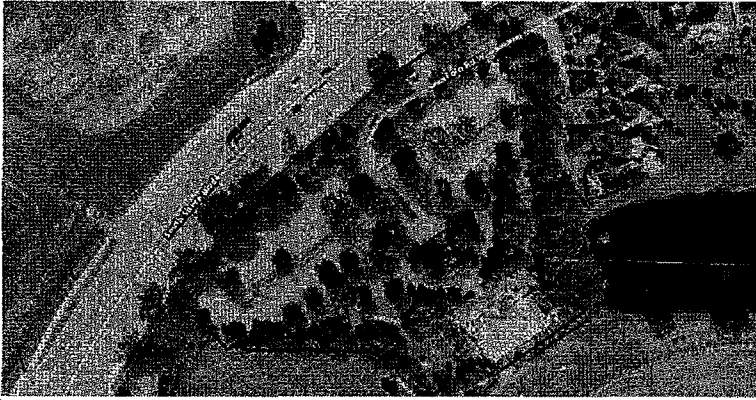
JOINDER:

SELLER:
SPERIN, L.L.C.

Neil S. Hirsch, individually as to
Paragraph 23 only

By: _____
Name: Neil S. Hirsch
Title: Manager

SCHEDULE A



PCN 73-41-44-16-01 -001 -0010



PCN 73-41-44-16-01 -001 -0020

SCHEDULE B

PERSONAL PROPERTY SCHEDULE

**TO BE PROVIDED BY THE PARTIES ON OR BEFORE THE EXPIRATION OF
THE INSPECTION PERIOD**

PURCHASE AND SALE AGREEMENT

(Real Estate, LLC Membership Units & Personal Property)

THIS PURCHASE AND SALE AGREEMENT ("Agreement") is made and entered into as of the ____ day of December, 2012, by and between Sperin, LLC, a Florida limited liability company ("**Seller**"), and Player's Club Restaurant, LLC, a Florida limited liability company or its assigns (collectively, "**Purchaser**"). In consideration of the mutual covenants and promises set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties to this Agreement, the parties agree to the following terms and conditions:

1. **PURCHASE AND SALE.** Subject to the terms of this Agreement, Seller agrees to sell to Purchaser and Purchaser agrees to purchase from Seller:

- (i) the real property and improvements located 13410 South Shore Boulevard, Wellington, Palm Beach County, Florida, consisting of 5.54 acres +/- acres with PCN 73-41-44-16-01-001-0010 and 73-41-44-16-01-001-0020 (the "**Property**");
- (ii) the series 4-COP quota alcoholic beverage license no. 60-000345, restaurant equipment, furnishings, art and other items of personal property located in the restaurant as of the date of this Agreement (the "**Personal Property**");
- (iii) one hundred percent (100%) of the membership units of Seller Sperin, LLC;
- (iv) all rights owned or held by Seller with the Village of Wellington under that certain settlement agreement dated January 24, 2006 resolving Player's Club's appeal of the Village's June 3, 2005 Interpretation/Decision on liquor license matters; and
- (v) the "Player's Club Restaurant" fictitious name registration no. G09000160238, and all intellectual property rights in the names "Player's Club Restaurant," "Player's Club," "Player's Restaurant," "Players" and all derivatives thereof.

It is the intention of the Seller and Purchaser that the term Property shall include all of the real property(ies) used in the operation of the Player's Club including, the restaurant parcel with the building, the parking lot(s) and the outside patio areas.

2. **EFFECTIVE DATE.** If this Agreement is not executed and delivered, by each party to it, to all parties on or before December 8, 2012, at 5:00 p.m., eastern time, this Agreement shall, after that time, be null and void and of no further force and effect. Execution and delivery shall be defined as the receipt of the fully executed Agreement by the parties by means of the U.S. Mails, delivery by a nationally recognized overnight delivery service, hand delivery or facsimile transmission. The date of this Agreement, for purposes of performance, shall be the date when the last one of Seller or Purchaser has signed this Agreement, as stated on the signature page (the "**Effective Date**").

3. **CLOSING DATE.** Subject to other provisions of this Agreement for extension or termination, closing on the transaction described in this Agreement (the "**Closing**") shall be held at the offices of The Galle Law Group, P.A. on December 21, 2012 (the "**Closing Date**").

4. **DEPOSIT.**

4.1 A deposit shall be required by Purchaser to secure the performance by Purchaser of Purchaser's obligations under this Agreement. The deposit shall be Five Hundred Thousand and No/100 Dollars (\$500,000.00), paid by Purchaser upon the execution of this Agreement (the "Deposit"), and held in an account with the Closing Agent.

5. **PURCHASE PRICE.**

5.1 The purchase price to be paid by Purchaser to Seller for the Property and Persona Property is Eight Million Seven Hundred Fifty Thousand and No/100 Dollars (\$8,750,000.00).

5.2 The Purchase Price shall be paid to Seller as follows:

\$500,000.00 Deposit;

\$8,250,000.00 in cash at Closing (or as modified if Purchaser elects partial Seller financing as set forth in paragraph 26 below), subject to prorations and adjustments as provided in this Agreement, to be paid by wire transfer;

\$8,750,000.00 Total Purchase Price.

6. **TITLE EVIDENCE.** Within **five (5)** days following the Effective Date, Seller's Counsel (the "Closing Agent") shall, at Seller's cost, deliver to Purchaser a title commitment for a new policy in favor of Purchaser. The title insurance commitment shall show Seller to be vested with good and marketable and insurable fee simple title to the Property, free and clear of all liens, encumbrances, restrictions, rights-of-way, easements and other matters affecting title, except the following (the "**Permitted Exceptions**"):

6.1 Ad valorem real estate taxes for 2012 and subsequent years;

6.2 All applicable zoning ordinances and regulations;

Title shall be deemed good, marketable and insurable only if Seller can, on Purchaser's behalf, obtain a commitment for an Owner's ALTA Form B Marketability Policy from Old Republic Title Insurance Company or some other comparable title insurance company licensed in the State of Florida ["Title Insurer"], at standard rates, containing no exceptions other than those listed above.

7. **SURVEY.**

7.1 Within the time period for providing the title insurance commitment, Purchaser, at Purchaser's expense, shall obtain a survey (the "**Survey**") of the Property. The Survey shall:

7.1.1 meet the minimum technical standards of the Florida Board of Land Surveyors;

7.1.2 be certified to Purchaser, the Title Insurer, the Title Agent, and to Purchaser's mortgage lender, if any;

7.1.3 be certified (or recertified) as of a date subsequent to the Effective Date;

7.1.4 set forth the total number of square feet and acres in the Property;

7.1.5 show the location of all improvements, utility and other lines; easements, either visible or recorded, and recording references of them.

7.2 If the Survey shall reflect any encroachments, overlaps, unrecorded easements or similar rights in third parties, or any other adverse matters not specifically provided for in this Agreement, then the same shall be deemed "title defects" as set forth in Section 8.

8. **TITLE DEFECTS.**

8.1 Purchaser shall have **three (3)** days from receipt of the owner's title insurance commitment within which to examine it. If Purchaser finds title to be defective, Purchaser shall, no later than the end of each such **three (3)** day examination period, notify Seller in writing specifying the title defect(s). If Purchaser fails to give Seller written notice of any title defect(s) before the expiration of each such **three (3)** day period, the defects shown in the title commitment shall be deemed to be waived as title objections to closing this transaction.

8.2 If Purchaser has given Seller timely written notice of defect(s) and the defect(s) render the title other than as represented in this Agreement, Seller shall use Seller's best efforts to cause such defects to be cured by the Closing Date.

8.3 If Seller does not eliminate such defects as of the Closing Date, or if any new "title defects" appear from the date of certification of the title commitment through the Closing Date, which Seller does not eliminate as of the Closing Date, Purchaser shall have the option to:

8.3.1 Close and accept the title "as is," without equitable reduction in the Purchase Price; in such event the Closing shall take place ten (10) days after notice of such election, or on the Closing Date, whichever is later; or

8.3.2 Cancel this Agreement and receive a full refund of the Deposit.

9. **INVESTIGATION PERIOD.**

9.1 During the Investigation Period, as defined below, Purchaser shall have the right to conduct, at Purchaser's expense, whatever reasonable investigations, analyses and studies of the Property that Purchaser may deem appropriate to satisfy Purchaser with regard the below items:

9.1.1 the permitted uses of and improvements to the Property under applicable building and zoning ordinances and the present compliance or non-compliance with the same;

9.1.2 evidence of any hazardous waste or similar materials in, on, under or about the Property;

9.1.3 all existing contracts, agreements, leases and tenancies affecting the Property, if any; and

9.1.4 evidence of any matters pertaining to the development of the Property.

9.2 If Purchaser is dissatisfied, for any reason and in Purchaser's exclusive and arbitrary judgment, with the result of Purchaser's investigations, then Purchaser may cancel this Agreement by notifying Seller of such cancellation on or before 5:00 p.m. on the tenth (10th) day after the Effective Date and receive the return of the Deposit (the "**Investigation Period**"). If Purchaser does not timely cancel this Agreement as set forth in this paragraph, the Deposit shall become non-refundable and at-risk of loss to Purchaser in the event that Purchaser does not close.

9.3 Notwithstanding any provisions in this Agreement to the contrary, Purchaser does and shall indemnify and hold harmless Seller, its agents, employees, successors and assigns, against all losses, claims, damages, liability, attorneys' and accountants' fees and costs of litigation and all other expenses related to, growing out of, or arising from the investigation of or entry upon the Property, or other acts undertaken by Purchaser, its agents, employees or assigns, under this Agreement. If Purchaser does not close on the purchase of the Property under this Agreement, it shall return the Property to the condition in which it existed prior to any investigations undertaken by Purchaser, its agents, employees and assigns pursuant to this Agreement.

10. **SELLER'S REPRESENTATIONS, WARRANTIES AND COVENANTS.** Seller represents and warrants to Purchaser and covenants and agrees with Purchaser as follows:

10.1 Seller has not entered into any contracts, subcontracts, arrangements, licenses, concessions, easements, or other agreements, either recorded or unrecorded, written or oral, affecting all or any portion of the Property, or the use of it.

10.2 To the best of Seller's knowledge, there are no (i) existing or pending improvement liens affecting the Property; (ii) violations of building codes and/or zoning ordinances or other governmental or regulatory laws, ordinances, regulations, orders or requirements affecting the Property; (iii) existing, pending or threatened lawsuits or appeals of prior lawsuits affecting the Property; or (iv) existing, pending or threatened condemnation proceedings affecting the Property;

10.3 Seller is vested with good and marketable and insurable fee simple title to the Property subject only to the Permitted Exceptions;

10.4 Seller shall comply prior to Closing with all laws, rules, regulations, and ordinances of all governmental authorities having jurisdiction over the Property;

10.5 To the best of Seller's knowledge, Seller has not done nor allowed anything which could cause toxic or hazardous materials or waste to be present in, on or about the Property, and has no knowledge of any such materials or waste being or ever having been in, on, or about the Property or adjacent properties; No toxic or hazardous materials or wastes have been, are or shall be located or stored on or under the Property or on or under property adjacent to it, which have or will have an adverse effect upon the use, development and/or value of the Property; all trash, if any, located on the Property shall be removed prior to the Closing;

10.6 All impact fees, use fees and assessments relating to the Property have been paid and the benefits of them are assignable to Purchaser without additional cost to Purchaser;

10.7 The Property is now zoned under a P.U.D. classification;

10.8 There are no agreements currently in effect which restrict the sale of the Property;

10.9 Seller has the right, power and authority to execute and deliver this Agreement and to consummate the transactions contemplated by it;

10.10 No commitments or agreements have been or will be made to any governmental authority, utility company, school board, church or other religious body, any homeowners or homeowners' association, or any other organization, group or individual, relating to the Property which would impose an obligation upon Purchaser to make any contributions or dedications of money or land to construct, install or maintain any improvements of a public or private nature on or off the Property, or otherwise impose liability on Purchaser; and

10.11 At all times during the term of this Agreement and as of Closing, all of Seller's representations, warranties and covenants in this Agreement shall be true and correct. The Seller's representations set forth in paragraph 10 shall survive Closing.

11. CONDITIONS PRECEDENT.

11.1 An express condition precedent to Purchaser's obligation to close this transaction are the truth and correctness of all of Seller's representations and warranties and the fulfillment of all of Seller's covenants at all times during the term of this Agreement and as of Closing, and no inquiry, analysis or examination made by Purchaser (or the results of them) shall reduce, limit or otherwise affect said representations, warranties and covenants.

12. DEFAULT BY SELLER. If any of Seller's representations and warranties are not

true and correct or Seller's covenants are not fulfilled or all other conditions precedent are not met as of Closing (or earlier specified date, if any), or Seller fails to perform any of the terms and conditions of this Agreement or is otherwise in default under this Agreement, then Purchaser, at Purchaser's sole option, may elect to:

12.1 Waive the default or failure and close "as is" without equitable reduction in the Purchase Price; or

12.2 Cancel this Agreement by written notice to Seller given on or before the Closing Date, in which event Escrow Agent shall return the Deposit to Purchaser; upon such return, both parties shall be released from all further obligations under this Agreement.

13. **DEFAULT BY PURCHASER.** In the event of the failure or refusal of Purchaser to close this transaction, without fault on Seller's part and without failure of title or any conditions precedent to Purchaser's obligations under this Agreement, Seller's remedies shall include the right to retain the Deposit.

14. **PRORATIONS.** Real estate and personal property taxes, insurance, rents, interest, cost and revenues and all other proratable items shall be prorated as of the Closing Date. In the event the taxes for the year of Closing are unknown, the tax proration will be based upon such taxes for the prior year or the millage rate as announced at day of Closing, and the then-latest tax appraiser's assessment of the Property and, at the request of either party, such taxes for the year of Closing shall be re prorated and adjusted when the tax bill for the year of Closing is received and the actual amount of taxes is known.

15. **IMPROVEMENT LIENS.** Certified, confirmed or ratified liens for governmental improvements or special assessments as of the Closing Date, if any, shall be paid in full by Seller, and pending liens for governmental improvements or special assessments as of the Closing Date shall be assumed by Purchaser, provided that where the improvement has been substantially completed as of the Closing Date, such pending lien shall be considered certified.

16. **CLOSING COSTS; DOCUMENTARY STAMPS AND INTANGIBLE TAXES.** At the Closing, Seller shall pay (i) the documentary stamps due on the warranty deed of conveyance and (ii) the cost of the title insurance premium issued by the Closing Agent. Purchaser shall pay the cost of the survey. Each party shall bear the recording costs of any instruments received by that party, except that Seller shall pay the recording costs on documents necessary to clear title.

17. **CLOSING.**

17.1 Seller shall convey title to the Property by good and sufficient Statutory Warranty Deed subject only to the Permitted Exceptions. Seller shall also deliver to Purchaser at the Closing:

17.1.1 a mechanic's lien affidavit, to the title insurer and Purchaser, in form acceptable to the title insurer to delete the standard exception relating to such liens in the owner's title insurance policy;

17.1.2 an affidavit, to the title insurer and Purchaser, that there are no unrecorded easements and that Seller has exclusive possession of the Property, except for the rights of tenants hereafter approved in writing by Purchaser and that Seller has done nothing to change the state of facts shown on the Survey, in form acceptable to the Title Insurer to delete the standard exceptions relating to such matters in the owner's title insurance policy;

17.1.3 a gap affidavit and indemnification agreement acceptable to Title Insurer for purposes of deleting the "gap" from the title commitment and policy;

17.1.4 instruments necessary to clear title, if any, including those required to remove standard exceptions from the title policy;

17.1.5 a non-foreign certificate and other documentation as may be appropriate and satisfactory to Purchaser to meet the non-withholding requirements under FIRPTA and any other federal statute or regulations (or, in the alternative, Seller shall cooperate with Purchaser in the withholding of funds pursuant to FIRPTA regulations);

17.1.6 a Bill of Sale for the Personal Property, including the 4-COP liquor license;

17.1.7 an assignment of Membership Interests for one hundred percent (100%) of the membership units in Seller Sperin, LLC; and

17.1.8 the promissory note and mortgage reflecting the loan terms set forth in paragraph 26 below, if Purchaser elects the Seller financing option.

17.2 Seller and Purchaser shall each execute such other documents as are reasonably necessary to consummate this transaction.

18. **BROKERS.** Seller, and not Purchaser, shall be obligated to pay a brokerage commission to Carol Sollak in the amount of three percent (3%) of the Purchase Price. Purchaser is not obligated and will have no liability whatsoever to pay any brokerage commissions.

19. **ASSIGNABILITY.** This Agreement is freely assignable by Purchaser. In the event of an assignment by Purchaser, Purchaser shall be not be released from its obligations under this Agreement in the event that the assignee breaches any of the terms or conditions of this Agreement.

20. **INSPECTIONS.** Purchaser, and Purchaser's agents and contractors, shall have the right during the term of this Agreement to enter upon the Property at all reasonable times for purposes of inspection and making tests and studies. Purchaser hereby agrees to and does indemnify, defend and hold Seller harmless from all liabilities, damages, claims, costs, or expenses whatsoever (including reasonable attorneys' fees and court costs) for bodily injury, death, or property damage resulting from any such inspection, test or study. The provisions of this Section shall survive the Closing or the termination or cancellation of this Agreement.

21. **NOTICES.** Any notices required or permitted to be given under this Agreement shall be delivered by hand, mailed by certified or registered mail, return receipt requested, in a postage prepaid envelope, or delivered by a nationally recognized overnight delivery service, and addressed as described below; notices shall be deemed effective only upon receipt or refusal of delivery.

Notices to Seller:

Sperin, LLC
Attn.: Neil S. Hirsch, Manager
555 Madison Avenue, 27th Floor
New York, New York

With a Copy to:

Donald Dufresne, Esq.
Greenspoon Marder
250 South Australian Avenue, Suite 700
West Palm Beach, Florida 33401
Tel: (561) 227-2370
Fax: (561) 653-3937
Email: donald.dufresne@gmlaw.com

Notices to Purchaser:

Player's Club Restaurant, LLC
c/o The Galle Law Group, P.A.
Attn: Craig T. Galle, Esq.
13501 South Shore Boulevard
Suite 103
Wellington, Florida 33414
Tel: (561) 798-1708
Fax: (561) 798-1709
Email: pololawyer@aol.com

With a Copy to:

The Galle Law Group, P.A.
Attn: Craig T. Galle, Esq.
13501 South Shore Boulevard
Suite 103
Wellington, Florida 33414
Tel: (561) 798-1708
Fax: (561) 798-1709
Email: pololawyer@aol.com

22. **RISK OF LOSS.**

22.1 The Property shall be conveyed to Purchaser in the same condition as on the date of this Agreement, ordinary wear and tear excepted, free of all tenancies or occupancies.

22.2 Upon receipt of an offer or any notice or communications from any governmental or quasi-governmental body seeking to take under its power of eminent domain all or any portion of the subject property, Seller shall promptly notify Purchaser of the receipt of same and shall send such communication, or a copy of it, to Purchaser. Upon receipt of such notice, Purchaser shall have the

right to rescind this Agreement by delivery of written notice to Seller within thirty (30) days of Purchaser's receipt of the communication from Seller. In the event Purchaser elects not to rescind, then (i) the proceeds of such condemnation of sale in lieu of condemnation shall be retained by Seller and the purchase price to be paid to Seller under this Agreement shall be reduced by an equal amount and (ii) the property so taken or sold shall not be subject to this Agreement. Seller and Purchaser agree to cooperate with each other to obtain the highest and best price for the condemned property.

23. **MISCELLANEOUS.**

23.1 This Agreement has been negotiated and executed in Florida; it shall be construed and governed in accordance with the laws of the State of Florida, without application of conflicts of laws principles.

23.2 In the event any term or provision of this Agreement is determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or be construed as deleted as such authority determines, and the remainder of this Agreement shall be construed to be in full force and effect.

23.3 In the event of any litigation between the parties under this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees. Wherever provision is made in this Agreement for "attorneys' fees," such term shall be deemed to include accountants' and attorneys' fees and court costs, whether or not litigation is commenced, including those for appellate proceedings and for paralegals and similar persons.

23.4 Each party has participated fully in the negotiation and preparation of this Agreement with full benefit of counsel. Accordingly, this Agreement shall not be more strictly construed against either party.

23.5 Whenever used in this Agreement, the singular shall include the plural, the plural shall include the singular, any gender shall include every other and all genders, and captions and paragraph headings shall be disregarded.

23.6 The captions in this Agreement are for the convenience of reference only and shall not be deemed to alter any provision of this Agreement.

23.7 Any reference in this Agreement to time periods less than five (5) days shall, in the computation thereof, exclude Saturdays, Sundays, and legal holidays; any time period provided for in this Agreement which shall end on a Saturday, Sunday or legal holiday shall extend to 5:00 p.m. of the next full business day.

23.8 This Agreement constitutes the entire agreement between the parties and may not be changed, altered or modified except by an instrument in writing signed by the party against whom enforcement of such change would be sought.

23.9 All references in this Agreement to exhibits, schedules, paragraphs, subparagraphs and sections refer to the respective subdivisions of this Agreement, unless the reference expressly identifies another document.

23.10 All of the terms of this Agreement, including but not limited to the representations, warranties and covenants of Seller, shall be binding upon and shall inure to the benefit of the parties to this Agreement and their respective successors and assigns.

23.11 Typewritten or handwritten provisions which are inserted in or attached to this Agreement as addenda or riders shall control all printed or pretyped provisions of this Agreement with which they may be in conflict.

23.12 All covenants, representations, agreements and warranties of Seller in this Agreement, all remedies related to them, and the provisions of this section shall survive the Closing or the termination or cancellation of this Agreement.

23.13 Time is of the essence as to all material terms of this Agreement.

24. **WAIVER OF JURY TRIAL.** Seller and Purchaser mutually agree that they waive all rights to a trial by jury in the event of any dispute or court action arising from, growing out of, or related to, this Agreement. The parties acknowledge that this waiver is a significant consideration to Purchaser to enter into this Agreement.

25. **CONFIDENTIALITY.** Both Seller and Purchaser agree to keep the existence and terms of this Agreement strictly confidential, neither of which shall be disclosed directly or indirectly to any third parties except professionals, consultants and agents who provide services in connection with the purchase and sale of the Property.

26. **FINANCING.** Seller agrees to finance the Property, at Purchaser's option, as follows:

(a) With a cash down payment of Five Million and 00/100 Dollars (\$5,000,000.00), Seller will finance the balance of the Purchase Price with a loan containing a fixed interest rate of four and one-half percent (4.5%); monthly interest only repayments to commence on February 1, 2013, based upon a ten (10) year amortization; and a balloon payment at the end of four (4) years (the "Loan");

(b) Seller to be secured by a first mortgage lien on the Property;

(c) Seller's financing shall not contain any prepayment penalty provisions or the requirement for any personal guarantees; and

(d) There shall be a proration and accounting of the loan payments made by Purchaser to Seller at the end of each calendar year during the life of the Loan.

27. **RIGHT OF FIRST REFUSAL.** For a period of five (5) years from the Closing, Solar Sportsystems, Inc. ("SSS") shall have a right of first refusal to purchase the Property from

Purchaser. The right of first refusal shall be exercised in writing, if at all, by SSS within three (3) calendar days of Purchaser's presentation to SSS of a purchase contract offer received by Purchaser from a prospective purchaser. The purchase terms and conditions, if the right of first refusal is timely exercised by SSS, shall be the same terms and conditions as are contained in the prospective purchaser's purchase contract offer to Purchaser.

EXECUTED as of the date first written above in several counterparts, each of which shall be deemed an original, but all of which constitute only one agreement.

Signed, sealed and delivered
in the presence of:

PURCHASER:

PLAYER'S CLUB RESTAURANT, LLC

Witness No. 1

Signature

By: _____

Its: _____

Witness No. 2

SELLER:

SPERIN, LLC

Witness No. 1

By: _____

Name: Neil S. Hirsch, Manager

Witness No. 2

PALM BEACH COUNTY COMMISSION ON ETHICS
MEMORANDUM OF PROBABLE CAUSE

To: Commission on Ethics
From: Megan Rogers, Advocate
Re: Complaint Number: C13-002, John Greene, Council member, Village of Wellington

- **Recommendation**

A finding of PROBABLE CAUSE may 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 conclude that the Respondent, Robert Margolis, violated the Palm Beach County Code of Ethics.

- **Jurisdiction**

COE has jurisdiction pursuant to Chapter 2, Article V, Division 8, section 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) Countywide Code of Ethics;
- (2) County Post-Employment Ordinance, and
- (3) County Lobbyist Registration Ordinance.

Article XIII, Section 2-443(a), *Misuse of public office of employment* prohibits a public official or employee from using their official position to take any action, or to influence others to take any action, in a manner which he or she knows or should know, will result in a special financial benefit, not shared by members of the general public, for any person or entity listed in §2-443(a)(1-7), which includes the official or employee.

Article XIII, Section 2-443(b), *Corrupt misuse of official position* of the Palm Beach County Code of Ethics prohibits any official or employee from using 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.

Article XIII, Section 2-444(e), *Gift law* prohibits any person or entity from offering, giving or agreeing to give an official or employee a gift and also prohibits employees and officials from accepting or agreeing to accept a gift from a person or entity, because of: An official public action taken or to be taken, or which could be taken; a legal duty performed or to be performed, or which could be performed, or; a legal duty violated or to be violated, or which could be violated by any official or employee.

- **Background**

This matter came to the attention of COE staff via a sworn complaint filed in January, 2013. The Complainant is Mark Bellissimo of Wellington Equestrian Partners, 14440 Pierson Rd., Wellington, FL. The Respondent listed on this complaint is John Greene, a current Council Member of the Village of Wellington (the Village). The complaint itself is a seven (7) page document including a "statement of facts" that lays out the substance of the complaint,

the COE complaint form and “supplemental statement of facts” that is four (4) pages in length. Also included in this package were several documents presented as evidence of the issues raised within the statement of facts. This complaint was sworn to by Complainant and properly notarized on January 9, 2013. The second complaint form was sworn to and properly notarized on February 13, 2013.

Complainant lists several issues within his statement of facts. As background, Complainant discusses the “Equestrian Village” project, as well as the controversy surrounding the election of Respondent, Wellington Council Member Matt Willhite and the current Mayor of Wellington, Robert Margolis. Complainant states that during the 2012 Village elections Respondent (as a candidate for Village Council), Robert Margolis (as a candidate for Mayor), and Matt Willhite (as an incumbent Village Council Person running for re-election), received extensive financial support from a Political Action Committee (the PAC) formed by “the Jacobs family.” The Jacobs’ families, primarily through a privately held business (Solar Sportsystems, Inc.), are land owners within the Village, who oppose the Equestrian Village project. When Respondent, Willhite and Margolis were elected in March of 2012, several lawsuits were filed and a voting re-count was conducted by the PBC Supervisor of Elections.

The general issue raised by this complaint is as follows:

- Respondent received gifts prohibited by the code of ethics because they were given in exchange for votes on important development matters before the Village of Wellington Council.

Complainant alleges that Respondent received gifts from Neil Hirsch, Steven Rapapport and Victoria McCullough by way of donations made by each to Respondent’s Legal Defense Fund. Under the PBC Code of Ethics, gifts to an official or employee of the county, or any municipality within the county may be prohibited under two (2) circumstances.

- Section 2-444(a)(1), *Gift law*, prohibits any official or employee of the county or a municipality from receiving a gift valued in excess of \$100 in the aggregate over the course of the calendar year from a vendor, lobbyist, principal or employer of a lobbyist who sells, leases or lobbies the governmental entity the official or employee serves. Section 2-444(a)(2), prohibits vendors, lobbyists, principals or employers of lobbyists from giving a gift in excess of \$100 in the aggregate over the course of a calendar year to an employee or official of a government entity they sell, lease or lobby.
- Section 2-444(e) prohibits any person or entity from offering, giving or agreeing to give an official or employee a gift and also prohibits employees and officials from accepting or agreeing to accept a gift from a person or entity, because of:
 - An official public action taken or to be taken, or which could be taken;
 - A legal duty performed or to be performed, or which could be performed, or;
 - A legal duty violated or to be violated, or which could be violated by any official or employee.

Complainant states that both prohibitions were violated by the donations to Respondent of \$2,500 by Neil Hirsch and \$4,000 by Victoria McCullough because they were both principals of lobbyists at the time of these donations, and that the donations were given as an improper *quid pro quo* to influence Respondent’s votes against the Equestrian Village project. Additionally, Complainant alleges that the \$5,000 donation made by Steven Rapapport to this fund was prohibited because it was given as an improper *quid pro quo* to influence Respondent’s votes against the Equestrian Village project.

Sworn testimony and documents later provided by Respondent demonstrate that Hirsch’s donation was in the amount of \$5,000, but was made prior to Respondent assuming office. Therefore this donation does not violate Section 2-444(a)(1) and Section 2-444(a)(2) of the code, but there remains legal sufficiency to believe it may violate Section 2-444(e).

Further, Complainant alleges that gifts provided by Neil Hirsch to Respondent on several occasions, including \$2,948 in temporary housing at the guest house of his Wellington home (from June 9, 2012 through August 14, 2012), a vacation weekend paid for by Hirsch and valued at \$3,180 (from September 22, 2012 through September 24, 2012), and two (2) complementary tickets to a Boys and Girls Club Gala valued at \$450 (for an event

taking place on December 1, 2012), were all given to Respondent by Hirsch as an improper *quid pro quo* to influence Respondent's votes against the Equestrian Village project.

- **Facts establishing probable cause for a violation of Section 2-443(a)(1), Misuse of public office or employment; Section 2-443(b), Corrupt misuse of official position; and Section 2-444(e), Gift law**

There is no direct evidence linking the gifts and legal defense fund payments from Neil Hirsch, Victoria McCullough or Steven Rapaport and Respondent's votes regarding the Equestrian Village Project. There is no direct evidence linking the gifts and legal defense fund payments from Neil Hirsch to Respondent's votes regarding a local restaurant owner's request for longer restaurant hours and expanded liquor license.

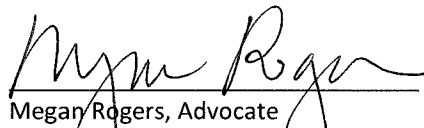
That being said, Respondent accepted gifts in excess of \$10,000 from Neil Hirsch since March of 2012. During the past year, Respondent voted to revoke two redevelopment orders related to the Equestrian Village Project, a development that Hirsch was publically opposed to and that abuts Hirsch's restaurant-property. In addition to the gifts received directly from Hirsch, Respondent accepted an additional \$5000 from Steven Rapaport, Mr. Hirsch's business associate and \$4000 from Victoria McCullough, a Wellington land owner and principal of a lobbyist whose property is located within the development area of the proposed Equestrian Village site.

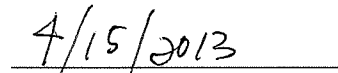
Sworn statements allege that Respondent attempted to use his official position to facilitate the sale of the Hirsch-owned Players Club, allegedly guaranteeing his vote to allow a new owner to keep the Players Club's special status regarding hours and licensing. Finally, in January 2013 Respondent accepted a contract for services with the Palm Beach County Sheriff's Foundation valued in excess of \$5000 a month. Both Neil Hirsch and Victoria McCullough are significant donors to the Foundation and serve as members of the Board of Directors. The frequency and reoccurring nature of these payments gives rise to an inference that these gifts and Respondent's votes may be connected. This nexus may support a determination that probable cause exists to believe Respondent acted in violation of the Code of Ethics.

- **Conclusion**

Sworn testimony and other competent and substantial evidence provides reasonably trustworthy facts and circumstances for the Commission on Ethics (COE) to conclude that the Respondent, accepted gifts in exchange for the use of his official position as a Village Council member violated §2-443(b), *Corrupt misuse of official position* and §2-444 (e), *Gift law* of the Code of Ethics.

By:


Megan Rogers, Advocate


Date

**Before the
Palm Beach County Ethics Commission**

**In re: JOHN GREENE,
Respondent.**

Complaint 13-002

RESPONSE TO THE ADVOCATE'S RECOMMENDATION

John Greene, through undersigned counsel, submits this written response to the Advocate's Memorandum of Probable Cause ("Advocate's Recommendation"),¹ in accordance with Rule 5.2 of the Palm Beach County Ethics Commission's (PBCEC) Rules of Procedure.²

Advocate's Recommendation

The Advocate has concluded that "[s]worn testimony and other competent and substantial evidence provides reasonably trustworthy facts and circumstances for the Commission on Ethics (COE) to conclude that the Respondent, accepted gifts in exchange for the use of his official position as a Village Council member, violated §2-443(b), *Corrupt misuse of official position* and §2-444(c), *Gift law* of the Code of Ethics."³

The Advocate's Recommendation as to each alleged violation will be addressed in detail below. However, in short, Mr. Greene submits that the evidence adduced by the Commission staff

¹ The Advocate's Recommendation, dated April 15, 2013, was forwarded to counsel for Respondent on April 15, 2013.

² Rule 5.2 of the Commission's Rules of Procedure provide as follows:

The Respondent shall be given not less than ten days from the date of mailing of the Advocate's recommendation within which time to file with the Commission a written response to the Advocate's Recommendation. The Respondent may also file a motion in opposition to the proceeding (including motions, to dismiss, to strike and for a more definite statement) upon receipt of the Advocate's probable cause recommendation.

³ Advocate's Recommendation at p. 3.

in the course of its investigation does not support a conclusion that Mr. Greene violated the Palm Beach County Code of Ethics as alleged by the Advocate, nor does it support a finding by this Commission that probable cause exists to warrant this matter going forward. To the contrary, the evidence compels that the instant complaint be dismissed with a finding of “no probable cause.”

Procedural History of this Complaint

The instant complaint was filed by Mark Bellissimo on or about January 9, 2013. Based upon a preliminary inquiry undertaken by the staff of the PBCEC,⁴ the staff recommended to the Executive Director that legal sufficiency existed to open a preliminary investigation regarding certain allegations set forth in the complaint.⁵

⁴ Rule 4.1.2 of the Commission’s Rules of Procedure provide as follows:

In determining whether or not legal sufficiency exists to support a self-initiated complaint the Commission on Ethics may undertake a preliminary inquiry into the facts and circumstances involving a possible violation of an ordinance within its jurisdiction. A preliminary inquiry is not subject to public records disclosure.

⁵ The staff recommended that a preliminary investigation be undertaken regarding the following allegations of the complaint:

1. That Mr. Greene, in his capacity as a member of the Village Council of the Village of Wellington, received a prohibited donation of \$2,500.00 through a legal defense fund on or about May 17, 2012 from Neil Hirsch, a member of the Board of Directors of the Wellington Equestrian Preservation Alliance, Inc. (WEPA), that may have employed a lobbyist who lobbied the Village of Wellington at the time of the gift. Memorandum of Inquiry ¶1 at p. 23. This recommendation was made notwithstanding the fact that there was no allegation in the Complaint that Mr. Hirsch made a \$2,500.00 contribution to the John Greene’s legal defense fund on May 17, 2012. In fact, the reference to these amounts and these dates indicates a lack of focus in the investigation in that these facts relate to a contribution by Mr. Hirsch to Mr. Margolis’ legal defense fund. Several pages of the Memorandum of Inquiry address the issue of whether there is a prohibited gift from Mr. Hirsch because WEPA employed a lobbyist, which is not issue in the case of the contribution to Mr. Greene’s legal defense fund. This misinformation was addressed in the Memorandum of Investigation at p. 2.

2. That Mr. Greene, in his capacity as a member of the Village Council of the Village of Wellington, received a prohibited donation of \$5,000.00 through a legal defense fund on or about November 21, 2012 from Stephen Rapapport, an officer of Sperin, Inc., a corporation with an ownership interest in the Player’s Club Restaurant and that this donation was based on a *quid pro quo* for Council votes to assist the Player’s Club, which based on its location abutting the Equestrian Village site, had a financial interest in the outcome of these votes. Memorandum of Inquiry ¶2 at p. 23.

3. That Mr. Greene, in his capacity as a member of the Village Council of the Village of Wellington, received a number of prohibited donations or donations – (i) \$4,000.00 from Victoria McCullough to his legal

In the course of its investigation of this matter, the staff of the PBCEC has produced three investigative-related documents which will be referred to in the course of this response: Memorandum of Inquiry;⁶ the Supplemental Memorandum of Inquiry;⁷ and the Memorandum of Investigation.⁸ In addition, the investigative staff of the PBCEC has also produced a timeline

defense fund on or about March 28, 2012; (ii) \$2,500.00 from Neil Hirsch to his legal defense fund on or about May 17, 2012; (iii) \$5,000.00 to his legal defense from Stephen Rapaport on or about November 21, 2012; (iv) \$2,928.00 for temporary housing from June 9, 2012 through September 24, 2012 from Neil Hirsch; (v) \$3,148.00 for a vacation from September 22, 2012 through August 14, 2012 from Neil Hirsch; and (vi) \$450.00 in tickets for the Boys and Girls Club Gala on December 1, 2012 from Neil Hirsch – based on a *quid pro quo* for Council votes in opposition to the Equestrian Village project on May 22, 2012 and July 10, 2012. Memorandum of Inquiry ¶13 at p. 23.

4. That Mr. Greene, as a member of the Village Council of the Village of Wellington, accepted a position with the Palm Beach County Sheriff's Foundation in January 2013, on which both Neil Hirsch and Victoria McCullough serve as members of the board of directors, as a *quid pro quo* for Council votes benefitting the financial interests of Mr. Hirsch and Victoria McCullough within the Village of Wellington. Memorandum of Inquiry ¶14 at p. 23.

As a result of the preliminary inquiry, staff recommended that legal sufficiency does not exist to open a preliminary into the following allegations of the complaint:

1. That Mr. Greene received a gift to his legal defense account on March 28, 2012 from Victoria McCullough when she was the principal of a lobbyist that lobbied the Village. In its inquiry the staff determined that Mr. Greene was not a member of the Village Council at time the donation was made to the legal defense fund, because he had not "assumed office" by being sworn into office. He was sworn in on April 10, 2012. Also, the preliminary inquiry revealed Ms. McCullough was not a principal of a lobbyist who lobbied the Village at this time, although she employed attorneys for a civil action she filed against the Village, and those attorneys later registered as lobbyists. Memorandum of Inquiry ¶15 at p. 23; See also Memorandum of Inquiry at p. 4.

2. That all donations to Mr. Greene's legal defense account were "suspect" because the election controversy was resolved at the end of March 2012, and he collected some of these donations after that time. Memorandum of Inquiry ¶16 at p. 23.

3. That Mr. Greene's use of his public position and training for this position on an application for employment with the Palm Beach County Sheriff's Foundation, which the complaint alleges is a violation of the misuse of office portion of the Code. The preliminary inquiry noted that PBCEC has previously held in advisory opinion RQO 12-012 (Ginger Pederson), that "[t]he use of one's government service in a biographical statement or curriculum vitae as one of a number of employment, social and community accomplishments and awards does not trigger this provision. However, specifically trading on one's official position or using one's official title to promote personal or outside business interests may violate the code." Memorandum of Inquiry ¶17 at pp. 23-24.

⁶ Dated March 20, 2013.

⁷ Dated April 12, 2013.

⁸ Dated April 12, 2013. The Memorandum of Investigation, which it is assumed is the "report prepared for presentation to the Advocate" referenced in Rule 4.11(c) of PBCEC Rules of Procedure, falls short of the presenting a synopsis of all evidence collected by the investigator materially related to the allegations of the complaint,

showing the approximate time of events which has been the subject of this proceeding. A copy of the PBCEC time line is attached hereto as Exhibit "A."

Background to Complaint

This complaint has its genesis in the 2012 Village of Wellington elections.⁹ It is part of a multi-front assault on Mr. Greene as part of calculated strategy to overturn the results of that election, in which Mr. Bellissimo, his associates and related corporate entities contributed significant amounts to Mr. Greene's opponent as well as to the other opponents of the "anti-Equestrian candidates", as Mr. Bellissimo characterizes them, who won the election over the candidates supported by Mr. Bellissimo.¹⁰ Mr. Bellissimo has filed similar allegations with the State Commission on Ethics and has incorporated these allegations into a second amended complaint of a lawsuit styled *Equestrian Sport Productions, LLC, et al. v. The Village of Wellington*, Case No. 50-2012-CA-012632-MB (Fla. 15th Judicial Circuit). A copy of the second amended complaint is attached hereto as Exhibit "B."

These allegations have been coordinated with the Wellington Chamber Political Action Committee, Inc., which requested that Governor Scott remove Mr. Greene, as well as Robert

whether such evidence tends to prove or disprove the allegations of the complaint. It appears from a review of the Commission's Rules of Procedure that the "investigator shall collect all evidence materially related to the allegations of the complaint, whether such evidence tends to prove or disprove the allegations" in the complaint, but the investigator's report "shall contain a synopsis of all pertinent information obtained through interview of witnesses, documentary evidence or other sources that supports the investigator's findings and recommendations." Compare Rule 4.11(b) and Rule 4.11(c) of PBCEC Rules of Procedure. To the extent that the investigator's report presented to the Advocate includes only such information "that supports the investigator's findings and recommendations," it can hardly be said to be impartial.

⁹ See Complaint.

¹⁰ See Complaint at p. 3. Mr. Bellissimo, various investors and corporate entities related to "the Equestrian Village Project" contributed approximately \$18,000.00 to the campaign of Mr. Margolis' opponent, Darell Bowen. Mr. Bowen reported raising \$32,115.00. Similarly, Mr. Bellissimo and his associates and related entities contributed approximately \$19,000.00 to the campaign of Shauna Hostetler, who opposed John Greene. Ms. Hostetler reported raising \$37,810.00. Mr. Bellissimo and his associates and related entities contributed approximately \$12,000.00 to the campaign of Al Paglia, who opposed Matt Willhite. Mr. Paglia reported raising \$21,844.00.

Margolis and Matt Willhite, from office “pending a thorough investigation into their actions and activities over the past nine months” relating to “the Equestrian Village project.” A copy of the letter to Governor Scott, dated January 2, 2013, is attached hereto as Exhibit “C.” The Wellington Chamber Political Action Committee, Inc. actively participated in the March 2012 election in opposition to Mr. Greene, Mr. Margolis and Mr. Willhite, which is the point from which Mr. Bellissimo’s complaint proceeds.¹¹

Focus of the 2012 Election

The focus of the 2012 Wellington Village election was “the Equestrian Village project.” This proposed development deeply divided the Village. Mr. Greene, along with Mr. Margolis and Mr. Willhite, each publicly voiced their opposition to “the Equestrian Village project” during the course of the campaign as did some third-party organizations.¹²

The complaint focuses on the Section 5.9.3 review¹³ of two resolutions of the Wellington Village Council. The first resolution, Resolution R2012-07, relating to the Equestrian Village Master Plan Amendment, was approved by the Village Council on February 1, 2012. The second resolution, Resolution R2012-08, relating to the Equestrian Village Commercial Arena Compatibility Determination, was passed and adopted by the Village Council on February 2, 2012. The procedural history concerning these two resolutions requires explication.¹⁴

¹¹ Mr. Bellissimo, various investors and related corporate entities related to “the Equestrian Village Project” contributed approximately \$10,500.00 to the Wellington Chamber Political Action Committee.

¹² The Complaint itself acknowledges that Mr. Greene was opposed to the Equestrian Village project. See Complaint at p. 2.

¹³ Section 5.9.3 of the Wellington Land Development Regulations sets forth the procedure for suspension of a development order upon failure of to comply with the requirements of a development order.

¹⁴ The complete procedural history of votes to revoke these development orders was not addressed in the course of the PBCEC’s investigation.

The development orders under review had been granted under the previous Village Council. The conditions attached to the approval of these resolutions were likewise imposed by Council action prior to Mr. Greene becoming a member of the Village Council. Resolution R2012-07, the Equestrian Village Master Plan Amendment, was approved subject to seven conditions, including the following: "The proposed plat of the 96.3 acre property shall be recorded prior to April 1, 2012." A copy of Resolution R2012-07 is attached hereto as Exhibit "D." Resolution R2012-08, the Equestrian Village Commercial Arena Compatibility Determination, was adopted subject to 35 conditions, including the following: "The owner shall record the plat of the 59.3 acre property for the Commercial Equestrian Arena prior to March 31, 2012." A copy of Resolution R2012-08 is attached hereto as Exhibit "E."

Questions Concerning Compliance with Conditions

The instant complaint leaves one with the impression that the question of whether there has been compliance with the conditions imposed on the approval of the Equestrian Village project was initiated by the anti-Equestrian Village candidates shortly after taking office.¹⁵ This was not the case. The issue of whether there had been compliance with these conditions had been addressed by the Council on at least two occasions prior to the election of Mr. Greene.

The platting issue was brought before the Village Council on February 28, 2012. At that time, there were three deficiencies that needed to be addressed: (i) the POA documents; (ii) the C. Oliver Wellington title issue; and (iii) the lack of signed mylars.¹⁶ The approval of the plat was tabled to the March 13, 2012 meeting of the Village Council, because the property owners failed to

¹⁵ See Complaint at page 2.

¹⁶ See Exhibit "F," Minutes of Wellington Council Meeting of February 28, 2012 at p. 11. On February 29, 2012, the Engineering Department received the C. Oliver Wellington information from the title company. This documentation was sent to the Village Attorney for review of completeness. The POA documents were received on March 5, 2012. There were no legal descriptions in these documents.

submit an executed copy of the plat mylar with all of the requisite owner and mortgagee signatures. Thus, the statement in the complaint that the status review was initiated within a month of the anti-Equestrian candidates taking office for an alleged failure to comply with platting deadlines is intentionally disingenuous.

On May 16, 2012, the Village received all the plat information required to place the plat issue on the May 22, 2012 agenda.¹⁷ Thus, it appears that the statement in the complaint that the reasons why the platting deadline was not met “had to do with the Village, and not the applicant” is another misstatement of fact by the complainant.¹⁸ It is significant to note that neither the applicant nor the property owners¹⁹ requested an extension of time prior to the applicable deadlines in order to comply with either the April 1, 2012 or the March 31, 2012 platting condition.²⁰

The statement in the complaint that the issue was “whether to grant a ministerial extension of time on the platting deadlines in R2012-07 and R2012-08”²¹ is yet another intentional misstatement of fact. “A duty or act is defined as ministerial when there is no room for the exercise of discretion, and the performance being required is directed by law.” *Shea v. Cochran*, 680 So. 2d 628, 629 (Fla. 4th DCA 1996)(quoting *Town of Manalapan v. Rechler*, 674 So.2d 789, 790 (Fla. 4th DCA 1996)). In considering the failure to comply with the platting deadline as set

¹⁷ See Exhibit “G,” Minutes of Wellington Council Meeting of May 22, 2012 at p. 19.

¹⁸ See Complaint at p. 2.

¹⁹ The identified applicant with respect to R2012-07 is Equestrian Sports Partners, LLC; the identified property owners are: Far Niente Stables II, LLC, Polo Field One, LLC, Stadium North, LLC, Stadium South, LLC, Palm Beach Polo, Inc., and White Birch Farm, Inc. The identified applicant with respect to R2012-08 is Equestrian Sports Partners, LLC; the identified property owners are: Far Niente Stables II, LLC, Polo Field One, LLC, Stadium North, LLC, Stadium South, LLC.

²⁰ As noted in the Council minutes of July 10, 2012 with respect to status review hearing on R2012-08: “The property owners did not request an extension of time in order to comply with the platting condition prior to March 31st.” See Exhibit “H,” consisting of pp. 285-289 of the Wellington Council Meeting of July 10, 2012 at p. 288.

²¹ Complaint at p. 2.

forth in the resolutions approving the Equestrian Village project, the Village Council had discretion to take certain actions and this discretion was specifically set forth in the notice given to Mr. Bellissimo. Yet, Mr. Bellissimo asserts in his complaint that the platting issue was ministerial.²²

On April 30, 2012, Mr. Bellissimo, was given notice of a meeting of the Village Council on May 22, 2012 at which it would consider his failure to comply with platting requirements in Resolution R2012-07. A copy of the April 30, 2012 notice regarding the May 22, 2012 Section 5.9.3 hearing concerning Resolution R2012-07 is attached hereto as Exhibit "I." On May 2, 2012, Mr. Bellissimo was given notice of a meeting of the Village Council on May 22, 2012 at which it would consider his failure to comply with platting requirements in Resolution R2012-08. A copy of the May 2, 2012 notice regarding the May 22, 2012 Section 5.9.3 hearing concerning Resolution R2012-08 is attached hereto as Exhibit "J." In each notice, Mr. Bellissimo was informed that "[t]he Village Council has the discretion to grant an extension of time to comply, modify or eliminate the approval condition, or to rescind the project approval."²³

Yet another notice was provided to Mr. Bellissimo on June 19, 2012 of a meeting of the Village Council on July 10, 2012 at which it would consider his failure to comply with platting requirements in R2012-08. A copy of the June 19, 2012 notice regarding the July 10, 2012 Section 5.9.3 hearing concerning R2012-08 is contained hereto as Exhibit "H."²⁴ The notice indicated "The Village Council has discretion to grant an extension of time to comply, modify or eliminate the approval condition, or to rescind the project approval." The notice further stated that the "Staff believes the appropriate action will be to revoke the approval granted under Resolution R2012-

²² See Complaint at page 2.

²³ The staff memorandum regarding each matter also indicated that the Village Council could also "[r]efer the matter to the Equestrian Preserve Committee and/or the Planning, Zoning & Adjustment Board for a recommendation."

²⁴ See Exhibit "H," p. 286.

08.”²⁵ Thus, the decision as to whether to grant an extension of time to comply with the platting deadline was not ministerial as specifically alleged in the complaint as reported in the staff’s Memorandum of Investigation.²⁶

Advocate’s Recommendation of Probable Cause

The Advocate concluded that there are “reasonably trustworthy facts and circumstances for the Commission ... to conclude that [Mr. Green] accepted gifts in exchange for the use of his official position as a Village Council member” in violation §2-413(b), *Corrupt misuse of official position*, and §2-444(c), *Gift law*, of the Code of Ethics. Mr. Greene disagrees with the Advocate’s conclusions based on the law and the facts. However, before examining the applicable law, a review of the facts adduced in the course of the investigation to date is appropriate.

Acceptance of Gifts

“There is no direct evidence linking the gifts and legal defense fund payments from Neil Hirsch, Victoria McCullough or Steven Rapaport and Respondent’s votes regarding the Equestrian Village Project.”²⁷ In fact, despite the unsupported assertion in the complaint that Mr. Greene changed his position with respect to the Equestrian Village project,²⁸ there is no evidence to support that assertion.

In terms of circumstantial evidence, the Advocate cites to the fact that “Respondent accepted gifts in excess of \$10,000 from Neil Hirsch since March of 2012.” Those gifts include:

²⁵ The Village staff position was based on the following: “[S]ince the approval of this project was reliant on a companion application to amend the Wellington PUD Master Plan (approved under Resolution R2012-07) and the original approval for that amendment has been rescinded, the subject Equestrian Arena approval cannot be made. Under the circumstances, a vote by Council to revoke the Commercial Equestrian Arena approval should be made.” See Exhibit “H,” at p. 285.

²⁶ Memorandum of Inquiry ¶4 at p. 2.

²⁷ Advocate’s Recommendation at p. 3.

²⁸ Complaint at p. 2.

- \$5,000.00 contribution to the legal defense fund on March 23, 2012.²⁹
- \$2,948.00 gift of temporary housing for the period of June 9, 2012 – August 14, 2012.³⁰
- \$3,148.00 gift of weekend vacation in the Keys (Little Palm Island) for the period September 22, 2012 – September 24, 2012.³¹
- \$450.00 gift of tickets to the Boys & Girls Club Annual Gala on December 1, 2012.³²

The facts and circumstances surrounding these gifts from Mr. Hirsch to Mr. Greene do not lead to the conclusion that he accepted “because of official action taken or to be taken, or which could be taken” within the meaning of Article XIII Section 2-444(e) of the Palm Beach County Code of Ethics.

Rather, the facts indicate that there is long-standing friendship between Mr. Hirsch and Mr. Greene and, throughout the years, Mr. Greene has stayed at Mr. Hirsch’s residences in the Hamptons and in New York City, has flown on Mr. Hirsch’s private jet, and has gone on many trips with Mr. Hirsch at Mr. Hirsch’s expense.³³ The investigation revealed that Mr. Hirsch knows Mr. Greene’s family well, and Mr. Hirsch has indicated he considers Mr. Greene “one of his best friends.” The investigation confirmed this long-standing personal relationship.³⁴

²⁹ Memorandum of Investigation at p. 3; Memorandum of Inquiry at p. 3.

³⁰ Memorandum of Investigation at p. 3; Memorandum of Inquiry at p. 3.

³¹ Memorandum of Investigation at p. 3; Memorandum of Inquiry at p. 3; Memorandum of Inquiry at p. 17.

³² Memorandum of Investigation at p. 3; Memorandum of Inquiry at p. 3.

³³ Memorandum of Inquiry at p. 11; Memorandum of Inquiry at p. 17. Mr. Hirsch testified that “because he has been successful in business, and Respondent is a working man raising a family, it was not unusual for Hirsch to pay when he invited Respondent and his family to accompany him on trips to St. Louis or even vacations.”

³⁴ Memorandum of Inquiry at p. 17. The investigative report notes:

The specific way in which [Mr. Hirsch] answered this question [concerning Mr. Greene’s children], which he likely would not have anticipated being asked verified for me that Hirsch did know Respondent’s family well.

The investigation indicates that the gift of temporary housing to Mr. Greene from Mr. Hirsch “was based on their personal friendship.”³⁵ Likewise, Mr. Hirsch gave tickets to Mr. Greene to the Boys & Girls Club Annual Gala on December 1, 2012 to Mr. Greene “because of their close personal friendship” and “no for no other reason.”³⁶ There is no evidence to the contrary.

In terms of circumstantial evidence, the Advocate cites to the fact that “Respondent accepted \$4,000.00 from Victoria McCullough, a Wellington landowner and principal of a lobbyist whose property is located within the development area of the proposed Equestrian Village site.”³⁷ This gift to the legal defense fund was made March 29, 2012 prior to Mr. Greene taking office on April 10, 2012 and was intended to support Mr. Greene’s legal defense fund in connection with the costs associated with the litigation which arose from the 2012 Wellington Village Council elections.³⁸ As a resident and elector of the Village of Wellington, Ms. McCullough contributed to

The report further notes:

I asked if Hirsch asks for anything from Respondent in return for paying for trips or vacations. He replied “No, I don’t.” Then I asked him if he ever asked for anything in return prior to Respondent becoming a Village Councilman, such as doing work on the side. Hirsch responded, “No.” I asked if he asked for anything in return since Respondent became a Councilman. Hirsch again responded, “No.”

The report further notes:

I asked if Hirsch asks for anything from Respondent in return for paying for this temporary housing. He replied “No.” I then asked him if this gift of temporary housing was based on the fact that Respondent was a Village Councilman, to which he replied, “No,” it was based on their personal friendship.

³⁵ Memorandum of Inquiry at p. 17.

³⁶ Memorandum of Inquiry at p. 18.

³⁷ Advocate’s Recommendation at p. 3.

³⁸ Memorandum of Investigation at p. 4. When specifically asked whether her contribution to the legal defense fund was intended to influence how Mr. Greene “voted on issues relating to the Equestrian Village project, or to influence [his] vote on any other issue that might come before the Village Council”, Ms. McCullough stated “No.” Memorandum of Investigation at p. 4.

Mr. Greene's campaign and elected to help defray the legal costs resulting from the 2012 post-election challenges incurred by Mr. Greene through a contribution to his legal defense fund.³⁹

There is no evidence to support the Advocate's assertion that Ms. McCullough's property is "within the development area of the proposed Equestrian Village site."⁴⁰ Nor is there any evidence to support the implication suggested by the Advocate that Ms. McCullough retained a lobbyist to oppose Mr. Bellissimo's Equestrian Village project.⁴¹ Ms. McCullough has personally opposed alcohol sales continuing until 2:00 a.m. at the Palm Beach International Equestrian Center, which is an issue separate and apart from the revocation of the Equestrian Village project development approvals. In addition, Ms. McCullough retained Janna Lhota, an attorney with Holland & Knight, in opposition to a road that Mr. Bellissimo wants to construct in connection with the Wellington Country Place Planned Unit Development, which affects her new residence to be located at Mida Farms, 13801 40th Street, and which in no way relates to the revocation of the Equestrian Village project.⁴² Thus, the factual predicate that there is a tie between the donation to

³⁹ Memorandum of Investigation at p. 4. The Commission's investigator again inquired of Ms. McCullough had "given any funds or other gifts to [Greene, Margolis or Willhite] in order to influence their votes on any issue. McCullough stated, "Nothing of any kind." Memorandum of Investigation at p. 4.

⁴⁰ Advocate's Recommendation at p. 3.

⁴¹ Advocate's Recommendation at p. 3.

⁴² In its investigation of *In re Bob Margolis*, PBCOE Complaint 12-015 and *In re Victoria McCullough*, PBCOE Complaint 12-016, the Commission is aware of this fact, yet it is not discussed in either the Memorandum of Inquiry or the Memorandum of Investigation in this case:

We next discussed the three people listed in the Central Lobbyist Registry System (CLRS) naming her as a principal, and listing the Village of Wellington as the government entity where they lobbied. McCullough advised that because of a plan to develop a road running through the Equestrian Preserve area and next to her property on 40th Street South, she became involved in defeating this measure because it violated the Master Plan for the Preserve, and also affected her property adversely. McCullough became involved in this issue in April of 2012, and it was because of this issue that she employed lobbyist Steven Gogola as a lobbyist to assist her. McCullough states that her land use attorney, Janna Lhota, also assisted in this matter, and that is why she was also registered. Finally, attorney Jason Lazarus was hired by her to handle the

the legal defense fund and the vote to revoke the Equestrian Village project development approvals is without factual support.⁴³

The Advocate also implies that there is something untoward from the fact that Mr. Greene “accepted an additional \$5,000.00 from Steven Rapaport, Mr. Hirsch’s business associate” for his legal defense fund.⁴⁴ The facts uncovered in the course of the investigation belie this implication. While the complaint implies that Mr. Rapaport has a “financial interest” in the Players Club property,⁴⁵ sworn testimony received in the course of the investigation indicates that is not the case. Mr. Hirsch testified “that neither Rapaport nor Zimmerman have an ownership interest in [the] Player’s Club, and that he (Hirsch) is the sole owner of both the restaurant and the land where it is located.”⁴⁶ Moreover, Mr. Rapaport “does not receive any profits from the restaurant....”⁴⁷

The Commission’s investigation goes further to detail the reasons why Mr. Rapaport would contribute to Mr. Green’s legal defense fund, notwithstanding he is not a resident of Wellington. In short, it is because Mr. Hirsch asked Mr. Rapaport to do so.⁴⁸ The evidence in

Section 5.3.15 hearing on the issue, but registered so that he could speak to Village staff if necessary.

See Memorandum of Investigation *In re Bob Margolis*, PBCOE Complaint 12-015 at p. 2.

⁴³ Likewise, there is no evidence of any tie between the donation to the legal defense fund and any action with respect to the Wellington Country Place Planned Unit Development issue either. When Ms. McCullough challenged the Village’s approval of Mr. Bellissimo’s Wellington Country Place Planned Unit Development was based on misrepresented facts, the Council rejected that allegation without opposition, with Mr. Greene voting in the affirmative. Minutes of Special Meeting of the Wellington Village Council of July 17, 2012.

⁴⁴ Advocate’s Recommendation at p. 3.

⁴⁵ Complaint at p. 5.

⁴⁶ Memorandum of Inquiry at p. 18.

⁴⁷ Memorandum of Inquiry at p. 18.

⁴⁸ Memorandum of Inquiry at p. 18. The Commission’s investigator reports:

the record reflects that Mr. Rapapport has known Mr. Greene for as long as Mr. Hirsch has known Mr. Greene, that they knew each other from back in New York, that Mr. Hirsch and Mr. Rapapport each give to the other's charities, and that Mr. Rapapport will give to candidates that Mr. Hirsch supports and that Mr. Hirsch will do likewise.⁴⁹

The Advocate implies that the circumstances of Mr. Greene's acceptance of "a contract for services with the Palm Beach County Sheriff's Foundation ("Foundation") valued in excess of \$5000 a month" was a gift from a person or entity because of "an official public action taken or to be taken, or which could be taken by Mr. Greene as a member of the Wellington Village Council, because Mr. Hirsch and Ms. McCullough are donors to the Foundation and serve on the board of directors of the Foundation."⁵⁰ The facts adduced in the course of the Commission's investigation do not support any such implication.

In the course of its investigation, both the Chairman of the Foundation and its Executive Director were interviewed. The investigation found that the Foundation's board "is comprised of twenty-two (22) members."⁵¹ The Chairman testified that neither Mr. Hirsch nor Ms. McCullough approached him about Mr. Greene's interest in the fundraising job.⁵² Both the Chairman and Executive Director stated that idea of hiring a fundraiser arose from board deliberations because

When I asked if Hirsch asked Rapapport to donate to Respondent's legal defense, Hirsch replied that he believed that he informed Rapapport that Respondent had some legal bills outstanding and could use some help. Hirsch pointed out that Rapapport knows Respondent and had the ability to help him financially.

Memorandum of Inquiry at p. 18.

⁴⁹ Memorandum of Inquiry at p. 18.

⁵⁰ Advocate's Recommendation at p. 3.

⁵¹ Memorandum of Investigation at p. 6.

⁵² Memorandum of Investigation at p. 6.

the board decided “there was a need to have a resource committed to fundraising and business development” in order to support the mission of the Foundation.⁵³ The Foundation’s Executive Director undertook a search for persons and or entities to fill the position, interviewed several candidates, including Mr. Greene, and recommended to the Chairman that Mr. Greene be offered the position.⁵⁴

The Commission’s investigation revealed that Mr. Hirsch made an initial introduction of Mr. Greene to the Executive Director but, other than that, he made no effort to influence the decision of the Executive Director to recommend Mr. Greene for the position.⁵⁵ The Executive Director testified that the fact that Mr. Hirsch and Ms. McCullough were significant donors to the Foundation did not affect his decision to recommend Mr. Greene for the position: “His recommendation was based on [Mr. Greene] being the most qualified person to hold this position.”⁵⁶ Mr. Greene was hired as a result of a vote of the board of directors; Ms. McCullough did not vote on the question.⁵⁷

Use of Position to Facilitate Sale

The investigation revealed that at the September 11, 2012 meeting of the Village Council, Juan Gando asked that the Village Council to approve longer restaurant hours together with an

⁵³ Memorandum of Investigation at p. 6; Memorandum of Investigation at p. 7.

⁵⁴ Memorandum of Investigation at p. 6; Memorandum of Investigation at pp. 7-8. Prior to accepting the job with the Foundation, Mr. Greene sought an advisory opinion from this Commission concerning what extent, if any, could he refer to his position as Village Councilman in seeking contributions for the Foundation. RQO 12-081. In addition, this Commission has recently informed Mr. Greene that there is “no legal sufficiency” to open a formal investigation regarding a complaint which contained allegations that Mr. Greene was recently employed by the Foundation and in that capacity he was now an employee of Mr. Hirsch and Ms. McCullough. *In re John Green*, AN 13-003, Memorandum of Inquiry (April 16, 2013).

⁵⁵ Memorandum of Investigation at pp. 7-8.

⁵⁶ Memorandum of Investigation at p. 8.

⁵⁷ Memorandum of Investigation at p. 8. The vote was 17-4, with Ms. McCullough not voting on the issue. Memorandum of Investigation at p. 8.

expanded liquor license to serve alcoholic beverages at his restaurant.⁵⁸ Mr. Greene voted “yes” to expanded hours, but “no” to the expanded liquor license.⁵⁹

The Advocate posits that “Respondent attempted to use his official to facilitate the sale of the Hirsch-owned Players Club, allegedly guaranteeing his vote to allow a new owner to keep the Players Club special status regarding hours and licensing.”⁶⁰ This allegation is based on an affidavit submitted by Mr. Gando and included in the complaint filed by Mr. Bellissimo.⁶¹ The affidavit was prepared by Mr. Bellissimo and that Mr. Gando was advised by his attorney, who is also Mr. Bellissimo’s attorney, to sign the affidavit so that he would not have to testify in court.⁶² When

⁵⁸ See Exhibit A at p. 1. As the Commission is well aware though its investigation of Complaint C12-012, the consideration of this matter on September 11, 2012 involved clarification of a motion made by Mr. Greene regarding this same issue at the Council meeting of August 28, 2012, because it was agreed that motion which was made by Mr. Greene at the August 28 meeting was “unclear and ambiguous.”

⁵⁹ See Exhibit A at p. 1; and Exhibit “G” at p. 42. The specific motion approved by the Council would permit Mr. Gando’s establishment to operate as a 4-COP-SRX with the following conditions: (1) Extended hours Monday through Thursday 7:00 a.m. to 11:30 p.m.; and Friday, Saturday and Sunday from 7:00 a.m. to 1:00 a.m.; (2) Patio service would terminate every day at 11:00 p.m.; and (3) The conditional use application to operate as a cocktail lounge would be denied.

⁶⁰ Advocate’s Recommendation at p. 3. It is significant to note:

that the Player’s Club operated under a different set of rules regarding their operation and the liquor license due to a settlement agreement between the Player’s Club and the Village entered into some years ago. Based on this agreement, the Player’s Club is able to operate beyond the hours stated within the Village Code, while all other restaurants in the Village must close earlier if they are located within a certain distance of a residential area. Additionally, the Player’s Club operates under a state liquor license known as a 4-COP license because of this settlement agreement. A 4-COP-SRX state liquor license, the type of license currently maintained by all other restaurants in the Village, has a state mandated requirement that these restaurants keep a ratio of 51% food sales to 49% liquor sales daily. The 4-COP license has no state requirement for ratio of food to liquor sales, and is the type most bars that are not also restaurants operate under. However, the settlement agreement between Player’s Club and the Village allows for the 51% to 49% food to liquor ratio to be on an annual basis and to be monitored by the Village, instead of this ratio being on a daily basis and monitored by the state. Greene then discussed the fact that there are policy issues within the Village code that seem to be in conflict, and that the Council is looking to fix these issues.

Memorandum of Inquiry at pp. 13-14.

⁶¹ Complaint, Exhibit E.

⁶² Memorandum of Inquiry at p. 22.

questioned by the Commission's investigator about the statements by Mr. Greene to guarantee his vote that a new owner would keep the Players Club special status regarding hours and licensing, Gando stated:

Greene told Gando that he would support later operating hours for every business in the Village overall because he believed the current hours should be changed, but he did not support a change in liquor licenses for each establishment to a 4COP license. I clarified that Greene had stated that he would support a 3:00AM closing time for all restaurants within the Village that wished to remain open that long. This would include the Player's Club as well as Gando's other restaurants if they chose to have these hours.⁶³

This is essentially the same position that Mr. Greene articulated at the September 11, 2012 meeting of the Village Council, when presented with Mr. Gando's request to expand the ability of his restaurant to sell alcoholic beverages.⁶⁴ In fact, there was no guarantee forthcoming from Mr. Greene, and Mr. Gando nixed his proposed purchase of the Players Club "because he got scared over the hours of operation issue."⁶⁵

⁶³ Memorandum of Inquiry at p. 21.

⁶⁴ This Commission has previously addressed a complaint filed by Mr. Gando against Mr. Greene concerning the votes of August 28, 2012 and September 11, 2012 regarding Mr. Gando's application for extended nighttime hours and a change in the state liquor license status under which The Grill operated. The complaint was found legally sufficient to warrant an investigation under Section 2-443(b), *Corrupt Misuse of official position*, and Section 2-444(e), *Gift law*, among other provisions of the Palm Beach County Code of Ethics. That investigation revealed that Mr. Greene had accepted a gift of lodging at Mr. Hirsch's residence, that Mr. Greene and Mr. Hirsch were close personal friends, that Mr. Greene had previously abstained from voting on other matters relating to Mr. Hirsch's involving Mr. Hirsch's interests, and that Mr. Greene and Mr. Hirsch had indicated that there was no quid pro quo or special benefit offered by Mr. Hirsch, based on the gift received. The Commission dismissed that complaint with a finding of "no probable cause." In that proceeding, the Commission concluded that "[t]he Inquiry and Investigation uncovered no evidence that Respondent and Hirsh 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." See "Executive Summary" at p. 2, *In re John J. Greene*, C12-012.

⁶⁵ Memorandum of Inquiry at p. 22.

Applicable Law and Analysis

The Advocate has concluded that the facts and circumstances revealed in the course of the staff's investigation of the complaint suggest that Mr. Greene violated Article XIII, Section 2-443(b) of the Palm Beach County Code of Ethics, and Mr. Greene violated Article XIII Section 2-444(c) of the Palm Beach County Code of Ethics. To the contrary, Mr. Greene asserts that the facts and circumstances revealed in the course of the staff's investigation of the complaint do not support a conclusion that Mr. Greene violated the Code of Ethics as alleged.

The Palm Beach County Code of Ethics provides, in pertinent part, as follows:

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. [Article XIII Section 2-443(b)]⁶⁶

No person or entity shall offer, give, or agree to give an official or employee a gift, and no official or employee shall accept a gift from a person or entity, because of:

- (1) An official action taken or to be taken, or which could be taken;
- (2) A legal duty performed or to be performed or which could be taken;

⁶⁶ In order to establish probable cause that Mr. Greene violated Article XIII, Section 2-443(b) of the Palm Beach County Code of Ethics, there must reasonably trustworthy facts and circumstances:

1. That the Respondent was an official or an employee;
2. That the official or employee used his or her official position or office, or any property or resource which may be within his or her trust;
3. To secure or attempt to secure a special privilege, benefit or exemption for himself, herself, or others;
and
4. That such action by the official or employee was done "corruptly;" that is, it was 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.

- (3) A legal duty violated or to be violated, or which could be violated by any official or employee. [Article XIII Section 2-444(c)]⁶⁷

The facts and circumstances reveal that all gifts given to and received by Mr. Greene were legal gifts and for purposes other than to influence official actions Mr. Greene took or was anticipated to take in an official capacity. In addition, all gifts were reported by Mr. Greene consistent with the requirements of law. Mr. Greene's employment as a fundraiser by the Palm Beach County Sheriff's Office Foundation was a legitimate employment opportunity for which he competed against other applicants and that the hiring process was not controlled or influenced by Mr. Hirsch or by Ms. McCullough. There is no evidence this employment resulted from any action taken by the Mr. Greene as a member of the Wellington Village Council. It came about as a result of the independent vote of the Foundation's board of directors.

Actions taken by Mr. Greene to revoke the development orders concerning Mr. Bellissimo's Equestrian Village project were consistent with the conditions attached to the approval of those development orders by the Wellington Village Council. Mr. Greene's actions in voting to revoke the development orders was consistent with positions he took during the campaign for election to the Village Council and there is no evidence to support a conclusion or finding that his

⁶⁷ In order to establish probable cause that Mr. Greene violated Article XIII Section 2-444(e) of the Palm Beach County Code of Ethics, there must be reasonably trustworthy facts and circumstances:

1. That the Respondent was an official or an employee;
2. That a person or entity offered gave or agreed to give an official or an employee a gift OR that an official or employee accepted or agreed to accept a gift from a person or entity;
3. Because of:
 - A. An official action taken or to be taken, or which could be taken;
 - B. A legal duty performed or which could be performed; or
 - C. A legal duty violated or to be violated, or which could be violated by any official or employee.

votes were influenced by the gifts which he received and which have been the subject of this investigation.

Finally, there is no competent evidence to support a finding or conclusion that Mr. Greene attempted to use his official position to facilitate the sale of the Hirsch-owned Players Club, by allegedly guaranteeing his vote to allow a new owner to keep the Players Club special status regarding hours and licensing. Both Mr. Gando's testimony to the Commission's investigator and Mr. Greene's votes as a Council member indicate that Mr. Greene has consistently supported a 3:00a.m. closing time for all restaurants within the Village that wished to remain open that long, but opposed changing the Village's current policy toward alcoholic licenses – policies instituted before Mr. Greene took office.

Conclusion

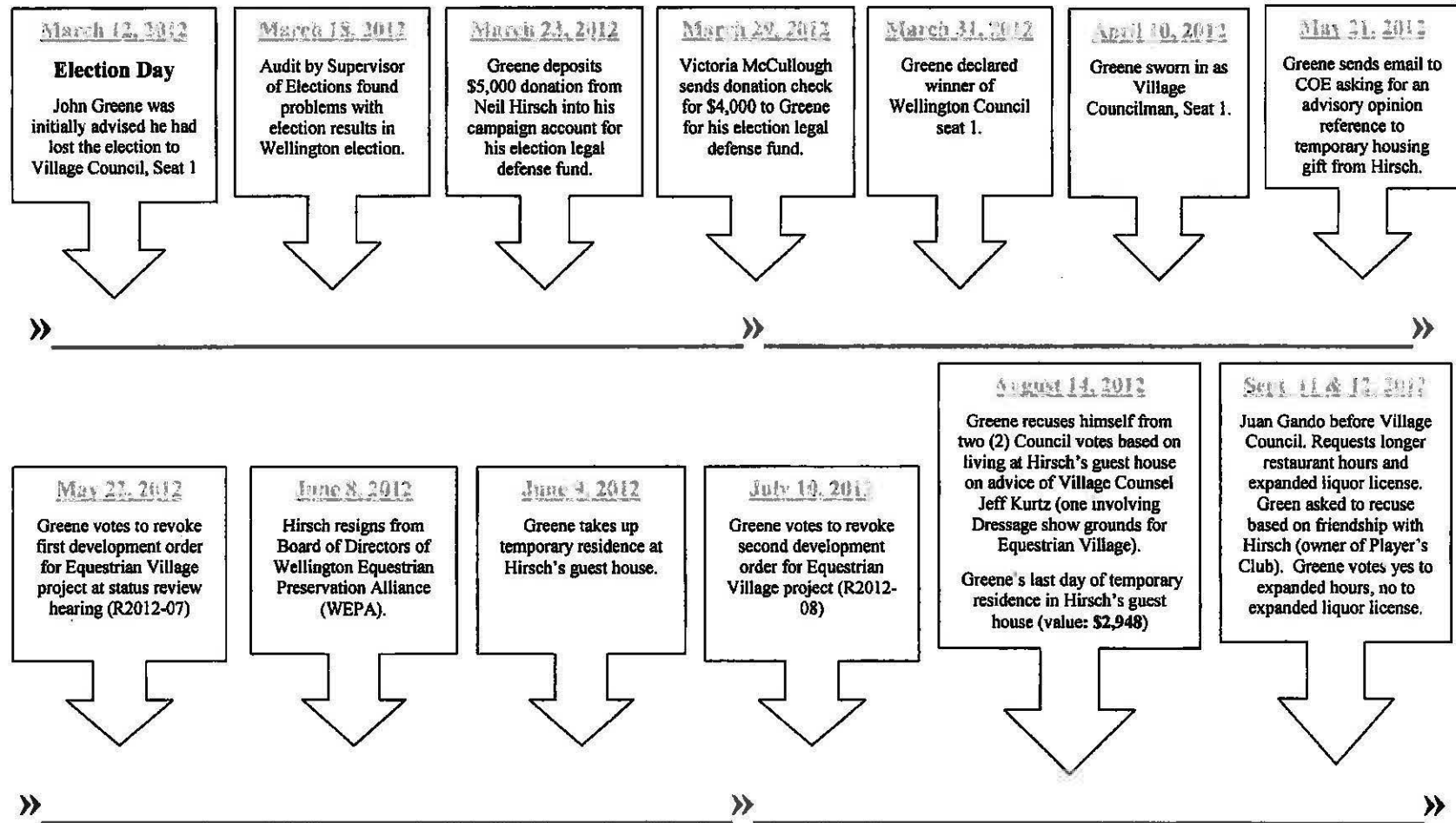
Based on the foregoing, Mr. Greene respectfully requests that the Commission reject the Advocate's Recommendation that there is probable cause to believe that he violated the Palm Beach County Code of Ethics, as described in the Advocate's Recommendation, and that it, instead, enter a finding of no probable cause and dismiss the instant complaint.

Respectfully submitted this 25th day of April, 2013, by:

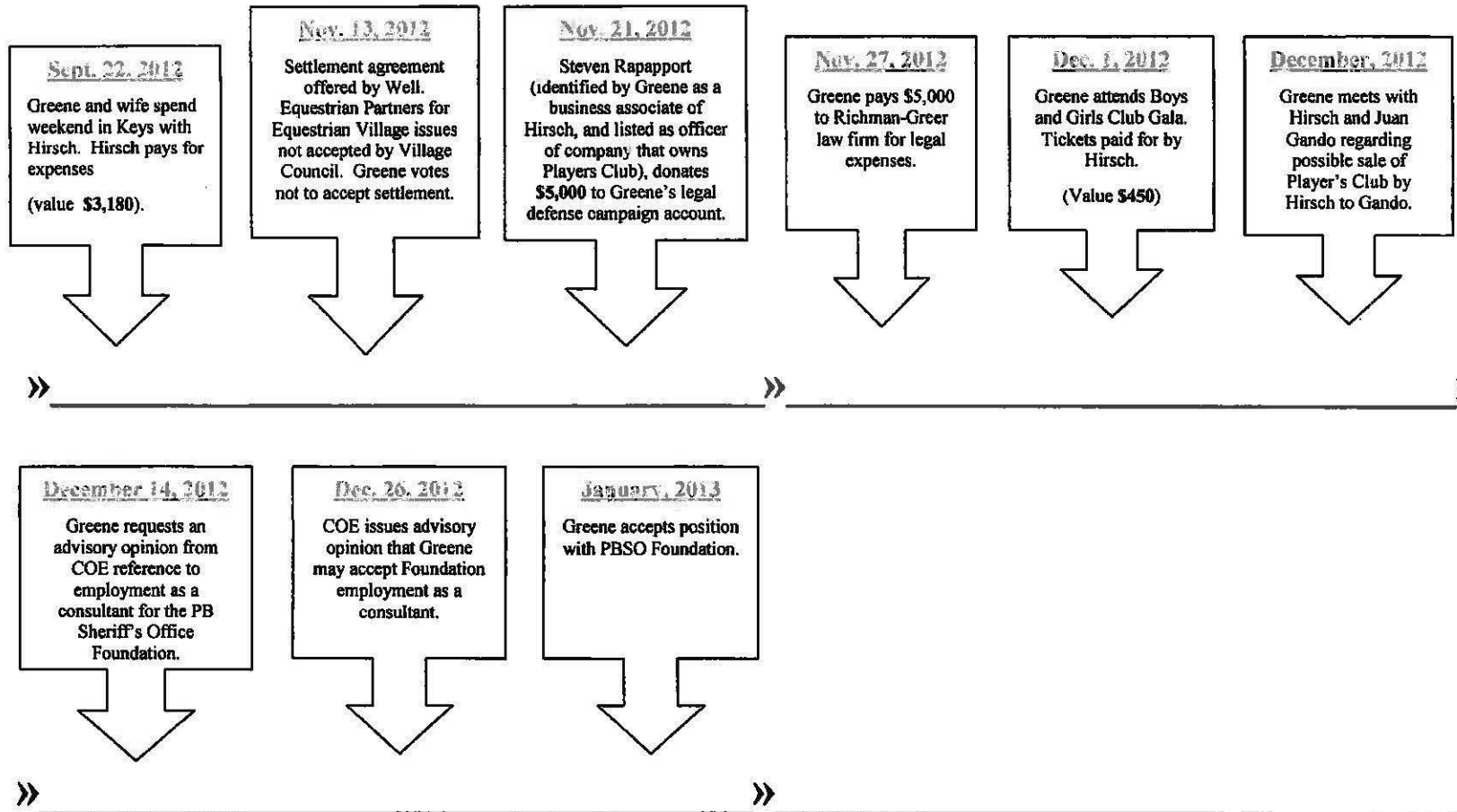
/s/ Mark Herron
Mark Herron
Email: mherron@lawfla.com
Florida Bar No. 0199737
MESSER CAPARELLO, P.A.
Post Office Box 15579
Tallahassee, FL 32317-5579
Telephone: (850) 222-0720
Facsimile: (850) 558-0659

Attorney for Respondent

Greene Timeline



Greene Timeline (cont)



STATE OF FLORIDA
COMMISSION ON ETHICS
 P. O. DRAWER 16709, TALLAHASSEE, FLORIDA 32317-5709

COMMISSION ON ETHICS
 DATE RECEIVED
 FEB 14 2013

COMPLAINT 13-004 AMENDMENT

1. PERSON BRINGING COMPLAINT:

Name: Mark Bellissimo, Managing Member of WEP, LLC Telephone Number: 561-459-6800
 Address: 13501 South Shore Blvd, Suite 105
 City: Wellington County: Palm Beach Zip Code: 33414

2. PERSON AGAINST WHOM COMPLAINT IS BROUGHT:

Current or former public officer, public employee, candidate, or lobbyist - please use one complaint form for each person you wish to complain against:

Name: John Greene Telephone Number: 561-791-4000
 Address: 12300 Forest Hill Blvd
 City: Wellington County: Palm Beach Zip Code: 33414
 Title of office or position held or sought: Village of Wellington Councilman

3. STATEMENT OF FACTS:

Please explain your complaint fully, either on the reverse side of this form or on additional sheets, providing a detailed description of the facts and the actions of the person named above. Include relevant dates and the names and addresses of persons whom you believe may be witnesses. If you believe that a particular provision of Article II, Section 8, Florida Constitution (the Sunshine Amendment) or of Part III, Chapter 119, Florida Statutes (the Code of Ethics for Public Officers and Employees) has been violated, please state the specific section(s). Please do not attach copies of lengthy documents; if they are relevant, your description of them will suffice. Also, please do not submit video tapes or audio tapes.

4. 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 thereto are true and correct to the best of my knowledge and belief.

STATE OF FLORIDA

COUNTY OF Palm Beach

Sworn to (or affirmed) and subscribed before me this 13th day of February

20 13 by Mark Bellissimo

(name of person making statement)

J. A. McCulloch
 (Signature of Notary Public - State of Florida)

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

Personally Known ☒ OR Produced Identification ☐

Type of Identification Produced:

[Signature]
 SIGNATURE OF COMPLAINANT

CE FORM 50-BEP, 4/2008



JUDITH A. MCCULLOCH
 MY COMMISSION # DD 002743
 EXPIRES: July 2, 2013
 Bonded Three Budget Notary Services

A-1

EXHIBIT B

Jurisdiction of the Commission: The Commission on Ethics has the authority to review and investigate complaints concerning possible breaches of the public trust (violations of the State's ethics laws) by public officers, public employees, and similar persons involved with state and local government in Florida, including Executive Branch lobbyists. Complaints about the actions of Judges should be brought to the Judicial Qualifications Commission, and complaints against attorneys in private practice should be made to The Florida Bar.

Procedures followed by the Commission: The Commission follows a three-stage process when it considers complaints.

The first stage is a determination of whether the allegations of the complaint are legally sufficient, that is, whether the complaint indicates a possible violation of any law over which the Commission has jurisdiction. If the complaint is found not to be legally sufficient, the Commission will order that the complaint be dismissed without investigation and all records relating to the complaint will become public at that time.

If the complaint is found to be legally sufficient, the investigative staff of the Commission will begin an investigation. The second stage of the Commission's proceedings involves this investigation of the complaint and a decision by the Commission of whether there is probable cause to believe that there has been a violation of any of the ethics laws. If the Commission finds that there is no probable cause to believe that there has been a violation of the ethics laws, the complaint will be dismissed and will become public at that time.

If the Commission finds that there is probable cause to believe there has been a violation of the ethics laws, the complaint becomes public and enters the third stage of proceedings. The third stage requires that the Commission decide whether the law actually was violated and, if so, what penalty should be recommended. This stage requires a public hearing (trial) at which evidence would be presented.

Attorney's Fees: If the complaint is dismissed, the person against whom the complaint is filed can file a petition to have the complainant pay his or her attorney's fees, which will be awarded after a hearing if the Commission finds that the complaint was made with a malicious intent to injure the official's reputation, the complainant knew that the statements made about the official were false or made the statements about the official with reckless disregard for the truth, and the statements were material.

Confidentiality: The Commission cannot accept anonymous complaints and cannot keep the identity of the complainant or any witness confidential. A complaint, as well as all of the Commission's proceedings and records relating to the complaint, is confidential and exempt from the public records law either until the person against whom the complaint is made waives confidentiality, or until the complaint reaches a stage in the Commission's proceedings where it becomes public. The Commission's procedures on confidentiality do not govern the actions of the complainant or the person against whom the complaint is made.

Legal Counsel: Both the complainant and the person complained against can be represented by legal counsel during the Commission's proceedings.

Other Information: More information about the ethics laws and the Commission's responsibilities is available at the Commission's website, www.ethics.state.fl.us, which contains publications, rules, and other information.

February 13, 2013

Florida Commission on Ethics
Attn: Virilindia Doss, Executive Director
3600 Maclay Blvd. South, Suite 201
Tallahassee, FL 32312

**Re: Supplemental Statement for State of Florida Ethics Complaint against
Councilman John Greene**

Dear Ethics Commission:

As you know, in January 2013, as managing member of Wellington Equestrian Partners, LLC ("WEP"), I filed an Ethics Complaint against John Greene, a newly elected Councilman for the Village of Wellington. Please allow this correspondence to serve as a supplement to my Complaint. Since the filing of my Complaint, new information has come to light which further demonstrates Councilman Greene's unethical conduct as well as his manipulation of the County Ethics Commission system. I believe Councilman Greene has established a pattern of behavior of using the County Ethics Commission to obtain endorsements for his actions by seeking ethics opinions based on incomplete and misleading facts, and by omitting material facts about individuals who have direct financial interests in key votes before the Village of Wellington Council.

As I set forth in my January Complaint, Councilman Greene requested an opinion from the County Ethics Commission as to whether he could reside in Neil Hirsch's guest house, on May 21, 2012, the day before a key vote regarding the Equestrian Village. In requesting that opinion, Councilman Greene omitted any facts relating to Mr. Hirsch's interest in the Players Club property, Mr. Hirsch's opposition to the Equestrian Village and the effect that the Council vote would have on the value of the Players Club. Councilman Greene then used the Commission's opinion as an endorsement allowing him to move into Mr. Hirsch's guest house, allegedly the day after Mr. Hirsch resigned from the lobbyist organization the Equestrian Preserve Alliance. Councilman Greene continued to vote on Equestrian Village items while living in Mr. Hirsch's guest house, and issued votes to revoke properly granted development orders, which votes benefitted Mr. Hirsch. Notably, Councilman Greene recused himself from an August 14, 2012 Council vote on an Equestrian Village item, citing a conflict due to his living arrangements with Mr. Hirsch. However, he failed to recuse himself from the May and July 2012 votes on Equestrian Village items, which were the most significant items, even though the same conflict existed.

It appears that Councilman Greene has once again obtained an opinion from the County Ethics Commission by omitting material facts and I believe that he is intentionally using the County Commission to sanction his actions. In particular, on December 14, 2012, Councilman Greene wrote a letter to Mr. Alan Johnson, Executive Director of the Palm Beach County Commission on Ethics, requesting an expedited opinion as to whether he could accept a paid

A-3

Florida Commission on Ethics

February 13, 2013

Page 2

position as a consultant for the Palm Beach County Sheriff's Foundation (the "Foundation"), a not-for-profit organization. Councilman Greene requested an expedited opinion from the County Commission because the paid position was to begin on January 1, 2013. In his letter Councilman Greene stated that no member of the Sheriff's Office serves as a board member or officer of the Foundation. On December 26, 2012, Mr. Johnson issued an opinion, *based on the facts and circumstances submitted by Councilman Greene*, indicating that the Palm Beach County Ethics Code does not prevent Councilman Greene from accepting employment with the Foundation. Councilman Greene thereafter accepted the paid position and is currently employed with the Foundation. Notably, while Councilman Greene made representations in his December 14th letter to the County Commission about members of the Sheriff's Office not serving as directors or officers of the Foundation, he failed to disclose that there were interested individuals on the Foundation Board. In particular, he failed to disclose that Neil Hirsch and Victoria McCullough serve on the Foundation Board. As set forth above and in my initial Complaint, I believe that there is an improper relationship between Mr. Hirsch and Councilman Greene and that they have conspired to use Councilman Greene's position to further Mr. Hirsch's interests. Further, Victoria McCullough is registered as the principal of a lobbyist in the Village of Wellington, and, through her attorney, has lobbied the Village Council, including Councilman Greene, against projects and applications by WEP's affiliates. Upon information and belief, Mr. Hirsch and Ms. McCullough were contributors to Councilman Greene's campaign for election to the Council, and, upon information and belief, Mr. Hirsch and Ms. McCullough together have contributed over \$50,000 to the general fund of the Foundation. It is my understanding that Councilman Greene is paid out of the Foundation's general fund. The Foundation board hired Councilman Greene as an employee or consultant of the Foundation. Mr. Hirsch and Ms. McCullough, individuals who have direct financial interests in matters that have come before the Wellington Village Council and upon which Councilman Greene has voted, now provide Councilman Greene compensation through the Foundation. I believe that Councilman Greene's employment with the Foundation is an indirect way for him to receive compensation in exchange for votes favorable to Mr. Hirsch and Ms. McCullough on matters before the Wellington Council.

I believe that Councilman Greene has shown a pattern of manipulating the process of obtaining an opinion from the County Commission. Clearly, he knew that in seeking an ethics opinion it was important to provide information about who was on the Foundation Board. However, he provided only selective information about the composition of the Board and failed to disclose two key individuals with financial interests in Councilman Greene's votes on the Wellington Council. He made the same material omissions when he requested the opinion as to whether he could reside in Mr. Hirsch's guest house.

Additionally, I believe that Councilman Greene has violated the State Ethics Code by using his official position for personal financial gain. In order to obtain his position with the Foundation, Councilman Greene submitted a CV which touts his position as a Councilman for Wellington as part of his professional experience, and also indicates training that he received through his position with the Village of Wellington, and paid by Wellington, as part of his professional training. Therefore, Councilman Greene used his position as a public officer for

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Florida Commission on Ethics

February 13, 2013

Page 3

Wellington and training that he received in that position, in order to obtain his employment with the Foundation and give himself a personal financial gain. I thank you for your attention to this matter and I am available to meet with you at your convenience to discuss this Complaint and provide any further information you deem necessary.

Very truly yours,

Mark J. Bellissimo

A-5

WELLINGTON CHAMBER POLITICAL ACTION COMMITTEE, INC.
12230 FOREST HILL BOULEVARD, SUITE 110D
WELLINGTON, FLORIDA 33414
(561) 227-1548

January 2, 2013

The Honorable Rick Scott
The Capitol
Tallahassee, Florida 32301

Dear Governor Scott:

It is with deep regret that I write you today concerning what I perceive to be the illegal political goings on by certain elected officials within the Village of Wellington.

It all began during the election of March, 2012, when a company called Solar Sport Systems, Inc., out of Buffalo, New York, with specific interests in this community, sunk over \$496,000.00 into local council races. In addition, individuals associated with Solar Sport Systems, Inc., who reside in Aurora, New York, near Buffalo, and other affiliated persons and business entities contributed a substantial amount of money to the campaigns of Bob Margolis, Matt Willhite and John Greene.

Since their election in March, these three individuals have exhibited outward signs that they had a specific, but unspoken agenda designed to advocate the position of the owners of Solar Sport Systems, Inc., which is designed to destroy the equestrian community that means so much to Wellington.

Specifically, at the last meeting of the Village council Mr. Margolis and Mr. Willhite were accused by Vice Mayor Howard Coates of colluding on an agenda of matters which they have brought before the council, in violation of the sunshine law, and the Vice Mayor has instructed Village staff to look into what is necessary to file an Ethics Complaint in that matter.

This past Saturday, December 29, 2012, The Palm Beach Post published a story, which if true, suggests that Mayor Margolis has accepted "gifts from individuals with specific interests pending before the Village Council, and on which Mr. Margolis participated and voted, in violation of the Palm Beach County Ethics Ordinance.

More specifically, the story alleges that Mr. Margolis accepted a "gift" in the amount of \$2,500.00 from Neil Hirsch, the wealthy owner of the Players Club and a large land owner, who was a director of an organization that employed a "lobbyist" and who was against the Equestrian Village project which was adjacent to his property. According to

the reports, Mr. Margolis accepted the check from Neil Hirsch on May 19, 2012, and then on May 22, 2012, proceeded to participate in and vote to revoke the Master Land Use Plan Amendments for the Equestrian Village project that the previous council had approved on nothing more than a technicality. It suggests that there was a "quid pro quo" associated with the "gift" and the subsequent vote.

In addition, the story goes on to report that Mr. Margolis accepted another "gift" in the amount of \$4,000.00 from Victoria McCullough, the wealthy owner of Mida Farms. Ms. McCullough's Mida Farms is located within the Wellington Country Place P.U.D., and has been a staunch opponent of a local developers plans for the adjacent property.

Ms. McCullough has employed an attorney "lobbyist" who sold the council on the idea that they could revoke the approval of this project by holding a hearing under the land development regulations pursuant to 5.1.15 which would allow them to re-examine the entire approval process. In addition, she has filed several lawsuits against the Village, and is currently adverse the Village in these matters.

I believe that the law is clear. An elected official is prohibited from accepting a "gift" in excess of \$100.00 from any lobbyist, employer of a lobbyist, or a member of an organization which employs a lobbyist. Mr. Margolis has accepted \$6,500.00 worth of "gifts" from improper sources, and has been accused of violating the Sunshine Law, in the circumstances, we ask that you remove Mr. Margolis pending further inquiries into these and other allegations.

Another disturbing issue has been brought to light by virtue of the Palm Beach Post story and the public records of the Palm Beach County Commission on Ethics. Apparently, back on May 21, 2012, councilman John Greene requested an opinion of the Commission on Ethics regarding his desire to temporarily take up residence in Neil Hirsch's mansion at the Palm Beach Polo and Country Club. The email request, which was sent from Mr. Greene's personal email account rather than his official email account dated May 21, 2012, just one day before he participated in and voted to revoke the approval of the Master Land Use Plan Amendment for the Equestrian Village on May 22, 2012, a position advocated for by Neil Hirsch.

In a Formal Opinion provided to "Johnny Greene", his personal email account name, and not sent through the official public record email account, Mr. Greene was advised by the Commission on Ethics that since Mr. Hirsch was a board member of a civic organization that employs a lobbyist and does attempt to influence the decisions that come directly before the council, he would not be able to accept the "gift" of lodging from Mr. Hirsch until Mr. Hirsch resigned as a director of that organization. The letter from the Commission on Ethics was dated June 8, 2012. Mr. Greene did move into Mr. Hirsch's house. However, the story in the Palm Beach Post on Saturday also stated that Mr. Hirsch did not resign from the board of Wellington Equestrian Preservation Alliance until August 31, 2012, long after Mr. Greene moved in to Mr. Hirsch's house in violation of the opinion of the Commission on Ethics. Even more fascinating, according

to the story, is the fact that Mr. Hirsch's resignation, while dated August 31st, indicated that it was to be effective retroactively back to June 8, 2012, ironically the date of the COE advisory opinion letter.

Finally, with respect to Mr. Greene, he does not deny that he accepted the "gift" of lodging from Mr. Hirsch, however, he has failed to file a Gift Disclosure Form to date indicating the amount of the value of the "gift" of lodging, or otherwise filing any public disclosure of same, in violation of Florida law.

But the most interesting fact of all is that not only did Mr. Margolis receive the "gift" of funds from Mr. Hirsch and Ms. McCullough for a legal defense fund, but it has been alleged that Mr. Willhite and Greene have as well, yet neither Greene nor Willhite have filed a Gift Disclosure Form as required by Florida law. Ms. McCullough has been quoted as saying that she had given checks to all three. Yet none of these three elected officials ever indicated that they had received "gifts" of cash, and lodging prior to attending the hearing, participating in the deliberations, and voting on matters which affected the individuals from whom they accepted these funds, in violation of Florida law.

With respect to Willhite and Greene, if the allegations that they also received "gifts" to their legal defense funds, or otherwise are true, we have a "willful, intentional and deliberate" failure to disclose to the people of Wellington that they received money from people with issues before the Village council, before voting on their issues, in violation of Florida law.

Governor, when you combine the issues raised and the votes taken by these three individuals that have not made sense to a great many of us since their election with the fact that it has been reported that they have all received "illegal gifts" from certain individuals who lobbied for the particular results achieved, it suddenly begins to make sense. It begins to reek of the corruption that we have fought so hard to overcome here in Palm Beach County.

I urge you to remove all three of these individuals from office pending a thorough investigation into their actions and activities over the past nine months. Only you have the power to stop these politicians from continuing to sell out our community to the highest bidder.

Please Act Now!

Sincerely,

Alexander L. Domb

cc: David Aronberg, State Attorney
Commissioner Jess Santamaria
Senator Joseph Abruzzo
Representative Mark Pafford
Vice Mayor Howard Coates
Councilwoman Anne Gerwig
The Palm Beach Post
The Town Crier

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RESOLUTION NO. R2012-07

A RESOLUTION OF WELLINGTON, FLORIDA'S COUNCIL APPROVING THE MASTER PLAN AMENDMENT PETITION NUMBER 2011-033 MPA1, ALSO KNOWN AS EQUESTRIAN VILLAGE MASTER PLAN AMENDMENT TO MODIFY THE WELLINGTON PLANNED UNIT DEVELOPMENT FOR AN APPROXIMATE 96.3 ACRE PORTION OF TRACT 30C TO INDICATE TRACT 30C-2 AS 16.5 ACRES, TRACT 30C-3 AS 43.0 ACRES AND TRACT 30C-4 AS 36.8 ACRES, CHANGING THE DESIGNATION OF THE THREE TRACTS FROM POLO AND TENNIS FACILITY TO COMMERCIAL RECREATION/COMMERCIAL EQUESTRIAN ARENA (TRACTS 30C-2 AND 30C-3) AND COMMERCIAL RECREATION/POLO FACILITY (TRACT 30C-4), ADD TWO ACCESS POINTS ON THE NORTH SIDE OF PIERSON ROAD AND A NEW ACCESS POINT ON THE EAST SIDE OF SOUTH SHORE BOULEVARD FOR PROPERTY LOCATED AT THE NORTHEAST CORNER OF PIERSON ROAD AND SOUTH SHORE BOULEVARD; PROVIDING A CONFLICTS CLAUSE; PROVIDING A REPEALER CLAUSE; PROVIDING A SAVINGS CLAUSE AND PROVIDING AN EFFECTIVE DATE.

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

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

WHEREAS, the Master Plan Amendment was reviewed and certified by the Development Review Committee as of November 28, 2011; and

WHEREAS, the Master Plan Amendment was reviewed and recommended for approval 4-0 by the Equestrian Preserve Committee on December 14, 2011; and

WHEREAS, the Master Plan Amendment was reviewed and recommended for approval 6-1 by the Planning, Zoning and Adjustment Board on January 4, 2012; and

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

WHEREAS, the Wellington's Council has made the following findings of fact:

1. The Master Plan Amendment is consistent with the Comprehensive Plan;
2. The subject request is consistent with the stated purposes and intent of the Land Development Regulations;

3. The requested Master Plan Amendment is consistent with the surrounding land uses and zoning districts;
4. The requested Master Plan Amendment requires an amendment to the Planned Unit Development Master Plan;
5. No adverse impacts to the natural environment are expected to occur as a result of the approval of the request;
6. The requested Master Plan Amendment would result in a logical and orderly development pattern;
7. The requested Master Plan Amendment is consistent with the applicable Equestrian Overlay Zoning District neighborhood plan; and
8. The requested Master Plan Amendment complies with Article 11, Adequate Public Facilities.

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

SECTION 1. The foregoing recitals are hereby affirmed and ratified. The Equestrian Village Wellington Planned Unit Development Master Plan Amendment, is hereby APPROVED as described in Exhibit "A", subject to the conditions of approval contained herein, which are in addition to the general requirements otherwise provided by this resolution.

- 1) This approval is based on Master Plan date stamped December 1, 2011.
- 2) All previous conditions to the Wellington PUD not specifically amended by this request are still in effect.
- 3) The proposed northern South Shore Boulevard driveway to Parcel 30C-2N shall not be constructed until the driveway to Parcel 30C-1 is closed. In the event of the driveway closure on Parcel C-1, the owner of C-2 shall be required to grant a cross access easement to C-1, allowing C-1 traffic access to the new driveway on C-2, should the owner of C-1 want such access. Until such time as the new driveway on C-2 is constructed, the applicant shall present an acceptable alternate on site traffic flow pattern to Village staff, which shall be subject to Development Review Committee approval at the time of final site plan approval.
- 4) A minimum 15 feet wide bridle path with appropriate crossings at the project driveways shall be regraded and provided on the north side of Pierson Road for approximately 3,200 feet from South Shore Boulevard to the horse crossing on Pierson Road at Southfields Road. Construction shall be completed prior to November 1, 2012. **(TRAFFIC)**
- 5) Signalized horse crossings with advance pavement markings and signage shall be provided at Pierson Road and South Shore Boulevard intersection and on

- 1 Pierson Road at the Southfields Road intersection. Construction shall be
2 completed prior to November 1, 2012.(TRAFFIC)
3 6) The bridle path in Condition 4 shall be installed in accordance with Wellington
4 standards as approved by the City Engineer.
5 7) The proposed plat of the 96.3 acre property shall be recorded prior to April 1,
6 2012.
7

8 **SECTION 2.** This Resolution shall become effective immediately upon adoption.
9

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11 **PASSED AND ADOPTED** this 1st day of February, 2012.
12

13 **RENDERED** the 13th day of February, 2012.
14


15 **ATTEST:**

WELLINGTON, FLORIDA

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18 BY:

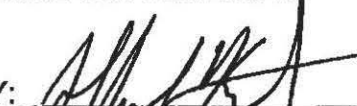

Awilda Rodriguez, Clerk

BY:


Darell Bowen, Mayor

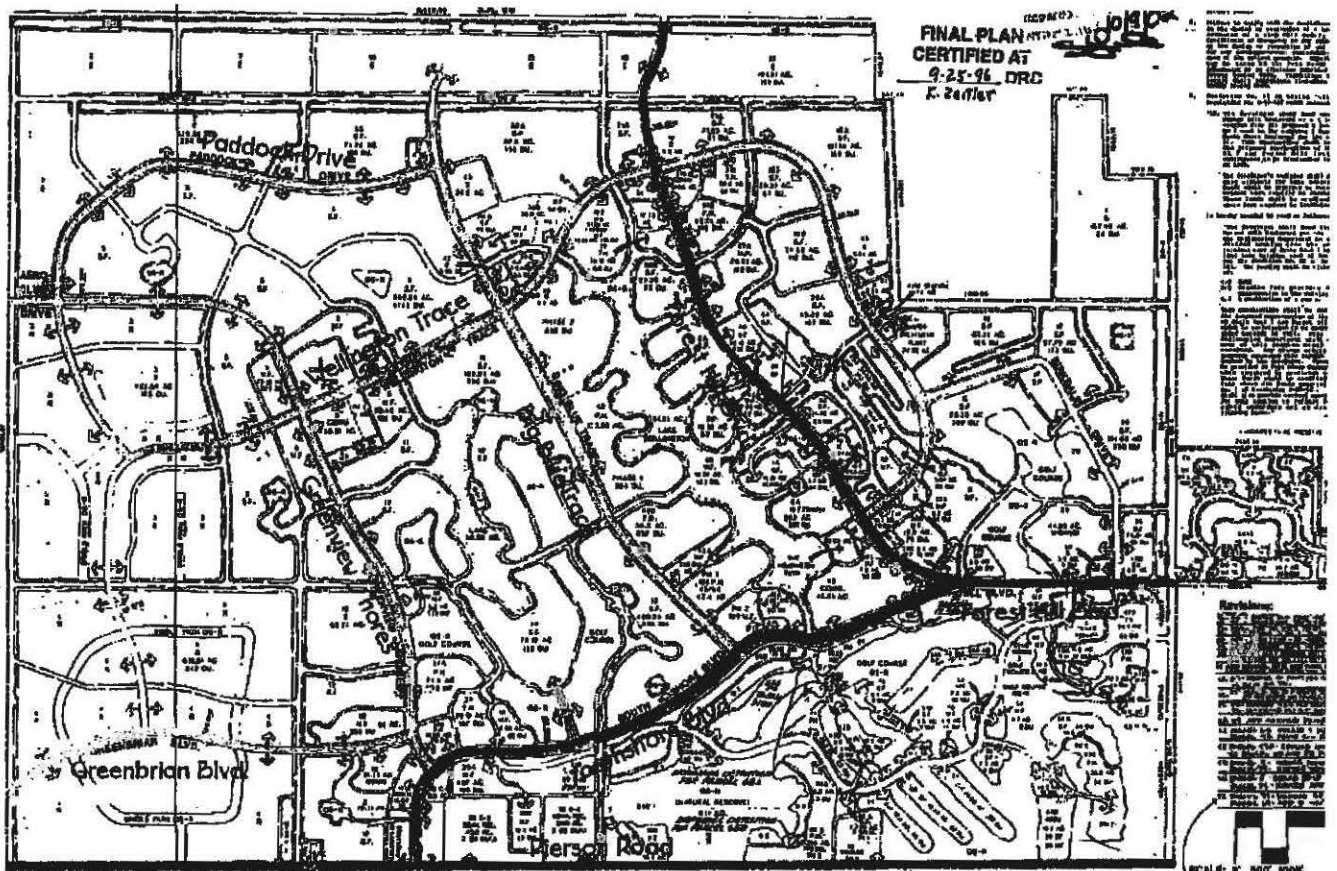
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22 **APPROVED AS TO FORM AND**
23 **LEGAL SUFFICIENCY:**
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26 BY:


Jeffrey S. Kurtz, Attorney

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Exhibit "A" Master Plan



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NOTICE OF INTENT TO SUSPEND DEVELOPMENT ORDERS

In accordance with Chapter 9 of the Village of Wellington Unified Land Development Code (the "ULDC"), "Compliance with Time Limitations and Conditions of Approval," subsection 5.9.3.A.3., the Village of Wellington hereby issues its notice of intent to suspend development orders for the property known as Wellington Country Place Planned Unit Development located in the eastern half of section 20 and all of section 21.

The legal description of the subject property is as follows: being the East ½ of Section 20, Township 44 South, Range 41 East and Section 21, Township 44 South, Range 41 East; less that part of the Southwest ¼ of said Section 21 described as follows: beginning at the Southwest corner of said Section 21; thence North 00 51' 13" East, along the West line of said Section 21, a distance of 1391.0 feet; thence South 89 17' 17" East, a distance of 1490.0 feet; thence South 00 51' 13" West, parallel with the West line of said Section 21, distance of 1386.26 feet, to the South line of said Section; thence Westerly along the South line of said Section 21, a distance of 1490.02 feet to the Point of Beginning, Less plats recorded as follow: Plat book 37, Pages 123-124; Plat book 38, page 190-191; Plat book 39, page 19-22; Plat book 56, pages 87-88; Plat book 60, pages 143-144; Plat book 61, pages 112-113; Plat book 61, pages 114-115; Plat book 64, pages 187-189; Plat book 64, pages 193-195; Plat book 64, pages 190-192; Plat book 66, page 46; Plat book 66, page 98-99 and Plat book 68, pages 156-157.

A time certain condition of approval contained in Resolution No. R2012-07, involving the Equestrian Village Master Plan Amendment, has not been timely met by the property owner. The specific time certain condition of approval that has not been completed is Condition No. 7 of Resolution R2012-07 which requires the property owner to record the proposed plat of the overall 96.3 acre property by April 1, 2012. Pursuant to Section 5.9.3 of the ULDC, a status review of this project will be conducted by the Village Council on May 22, 2012. Until the review is completed by the Village Council, no new development orders shall be issued by the Village of Wellington for this property. After its review, the Village Council has the discretion to grant an extension of time to comply, modify or eliminate the approval condition, or to rescind the project approval.

Until this review is completed and action taken to release the property from this notice, the Village of Wellington will not issue any new development orders for the subject property. Any questions about this notice should be directed to the Village of Wellington Planning, Zoning and Building Department.

Dated this 4TH day of May, 2012

Robert E. Basehart

ROBERT E. BASEHART
Growth Management Director

STATE OF FLORIDA)
COUNTY OF PALM BEACH)

SWORN TO and subscribed before me this 4TH day of May 2012, by ROBERT E. BASEHART, who is personally known to me or who produced _____ as identification and who did/did not take an oath.

Jennifer Fritz
NOTARY PUBLIC, STATE OF FLORIDA

JENNIFER FRITZ
Print, Type, or Stamp Name of Notary

My Commission Expires:



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RESOLUTION NO. R2012-08

A RESOLUTION OF WELLINGTON, FLORIDA'S COUNCIL, APPROVING A COMPATIBILITY DETERMINATION PETITION NUMBER 2011-033 CU1, ALSO KNOWN AS EQUESTRIAN VILLAGE TO PROVIDE A COMPATIBILITY DETERMINATION FOR A COMMERCIAL EQUESTRIAN ARENA IN THE URBAN SERVICE AREA WITH RECOMMENDED CONDITIONS TO MITIGATE POTENTIAL INCOMPATIBILITY ISSUES AND PROVIDING STANDARDS, PROVIDING A CONFLICTS CLAUSE; PROVIDING A REPEALER CLAUSE; PROVIDING A SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

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

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

WHEREAS, the Commercial Equestrian Arena Compatibility Determination Application was reviewed and certified by the Development Review Committee as of November 9, 2011; and

WHEREAS the Commercial Equestrian Arena Application was reviewed by the Equestrian Preserve Committee on December 14, 2011 and recommended for approval (4-0); and

WHEREAS the Commercial Equestrian Arena Application was reviewed by the Planning Zoning and Adjustment Board on January 4, 2012 and recommended for approval 7-0; and

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

WHEREAS, Wellington's Council has made the following findings of fact:

The Commercial Equestrian Arena property possesses a Commercial Recreation Future Land Use Map designation and an Equestrian Overlay Zoning District designation, Wellington's Land Development Regulations (LDR's) Section 6.4.4.41 states a Commercial Equestrian Arena is permitted subject to a compatibility analysis since the property is within Wellington's Urban Service Area (USA)

1. The Equestrian Village Commercial Equestrian Arena of is consistent with the Comprehensive Plan;
2. The subject request is consistent with the stated purposes and intent of the Land Development Regulations;
3. The Equestrian Village Commercial Equestrian Arena is consistent and compatible with the surrounding land uses and zoning districts;
4. No adverse impacts to the natural environment are expected to occur as a result of the approval of the request;
5. The Equestrian Village Commercial Equestrian Arena development would result in a logical and orderly development pattern;
6. The applicable Equestrian Overlay Zoning District hours of operation shall be modified as set forth herein ; and
7. There exist Adequate Public Facilities to support the Commercial Equestrian Arena.

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

SECTION 1. The Equestrian Village Compatibility Determination for the Commercial Equestrian Arena, is hereby APPROVED/DENIED as described in Exhibit "A", subject to the conditions of approval contained herein, which are in addition to the general requirements otherwise provided by this resolution.

Conditions of Approval:

Staff recommended approval conditions are as follows:

1. Commercial Equestrian Arena hours of operation shall be limited from 7:00 am to 10:00 pm.
2. The Commercial Equestrian Arena site plan shall be revised to indicate the location of accessory commercial activities in designated hospitality and vendor areas.
3. If the proposed plat for Commercial Equestrian Arena indicates a separate parcel for the existing Cell Tower, a variance will be required for riding and show rings located within 100 feet of any property line. In that event,

Developer shall submit by May 1, 2012 an application for a Variance seeking relief from the required 100 feet setback from the cell tower to the Covered Equestrian Ring

4. All parking lot lighting shall be limited to a maximum of 15 feet in height.
5. Use of portable generators is prohibited unless "Quiet Pack" generators are utilized and all generators shall be located away from the residences.
6. The use of amplified sound systems and equipment including (radio, iPod or similar devices with auxiliary speakers, record players, similar music devices) or televisions are prohibited in permanent barns or temporary stabling tents except to advise riders and exhibitors of upcoming competitive events. Eelectronic listening devices may be used with earphones.
7. For monitoring purposes, properly identified Wellington staff including Building Inspectors, Code Compliance Officers and PZB staff shall be allowed unrestricted access to the site.
8. Only the three western most barns may be constructed at this time. After the commercial equestrian arena has been operating for at least a full year, the owner of the commercial equestrian arena may submit a petition requesting the construction of a fourth barn. The location of this barn shall be subject to the approval of Wellington's Council after a public hearing, following the same procedures required for review of a commercial equestrian arena.

ENVIRONMENTAL

9. All hoses and hose bibs shall be equipped with an automatic shut off nozzle to restrict water flow.
10. Filter fabric or similar equipment to reduce debris from entering the storm water system shall be installed and maintained or replaced as necessary or as directed by Wellington.
11. All facilities, operations and improvements on the site shall comply with the most recent Best Management Practices (BMPs).
12. Approved horse hair separators shall be used on horse wash facilities, laundry facilities and equestrian support facilities as required prior to discharge into the public sanitary sewer collection system.
13. Manure shall be removed from the premises on a daily basis and disposed in a manner approved by the Palm Beach County Health Department. Manure shall be collected and transported by a registered commercial livestock waste hauler or registered livestock self-hauler. Owner/Operator shall coordinate with

1 Engineering Division to register the name of the manure hauler annually prior
2 to November 1st. Manure shall be removed daily during major events.

3 14. Livestock waste storage structures shall be elevated in accordance with BMP
4 regulations and shall comply with the design standards of Chapter 30, Article
5 V, of the Wellington's Code of Ordinances.

6 15. Livestock waste storage structures shall be constructed so that no rainfall is
7 allowed to enter and no liquid is released. Temporary tents may be utilized as
8 covers for the waste storage structures, as approved by Wellington's BMP
9 Officer and the Building Division.

10
11 **BUILDING AND FIRE RESCUE.**
12

13 16. The applicant shall obtain permits for all structures and tents in accordance
14 with Florida Building Code and including the Fire Code.

15 17. All tents shall be inspected by the Palm Beach County Fire Rescue
16 Department (PBCFRD) for compliance with applicable Federal, State, County,
17 or Municipal fire protection standards. Tents shall be inspected and approved
18 prior to occupancy.

19 18. All food vendor tents and facilities shall be inspected, as applicable by
20 Wellington, PBCFRD and the Palm Beach County Health Department
21 (PBCHD) prior to beginning operations.

22
23 **VENDORS.**
24

25 19. Applicant shall submit a list of all proposed vendors two weeks prior to major
26 events. All vendors shall also obtain a Business Tax Receipt (formerly
27 Occupational License) from Wellington if required prior to selling or offering
28 services for more than a two week period.

29 20. Vendors selling food shall obtain PBCHD inspection and approval prior to
30 commencing sales.

31
32 **SANITARY SERVICES.**
33

34 21. Applicant shall provide handicap accessible sanitation facilities and portable
35 sanitation stations throughout the Commercial Equestrian Arena show grounds
36 for peak events as noted on the site plan. The applicant and Wellington shall
37 continue a cooperative effort in the collection and disposal of recyclable
38 materials.
39
40

1
2
3 **TRAFFIC**
4

- 5 **22.** Petitioner shall ensure the proposed 400 stalls shall be limited to on-site use by
6 exhibitors and participants of this Commercial Equestrian Arena only.
7
- 8 **23.** No weekday events at the commercial equestrian arena shall begin before 10
9 am or between 4pm and 6pm. No weekday events at the commercial
10 equestrian arena shall end between 4pm and 6pm. Petitioner may resubmit an
11 updated Traffic Study based on seasonal peak periods and scheduled events
12 to demonstrate these additional weekday events are insignificant and may be
13 allowed without a limitation by condition of approval.
14
- 15 **24.** In order to comply with the mandatory Traffic Performance Standards, in place
16 at the time of this approval, no building permits for the site shall be issued after
17 December 31, 2016. A time extension for this condition may be approved by
18 the County Engineer based on an approved Traffic Study which complies with
19 the mandatory Traffic Performance Standards in place at the time of the
20 request.
21
- 22 **25.** The County traffic concurrency approval is subject to the Project Aggregation
23 Rules set forth in the Traffic Performance Standards Ordinance.
24
25
- 26 **26.** The existing South Shore Boulevard driveway to the property shall be
27 maintained or improved to include the following:
28 • A minimum 100 foot throat distance measured from the right-of-way on
29 South Shore Boulevard.
30 • Egress lane at a minimum of 12 feet.
31 • Ingress lane at a minimum of 14 feet.
32 • Minimum pavement return radii of 40 feet.
33 Construction shall be completed prior to November 1, 2012.
34
35
- 36 **27.** The proposed Pierson Road driveway to Parcel 30C-3 shall be constructed to
37 include the following:
38 • A minimum 50 foot throat distance measured from the edge of pavement on
39 Pierson Road.
40 • Dual egress lanes at a minimum of 12 feet each with appropriate marking.
41 • Ingress lane at a minimum of 12 feet.
42 • Minimum pavement return radii of 35 feet.
43 • Located no closer than 660 feet from the edge of pavement of South Shore
44 Boulevard.
45

Construction shall be completed prior to November 1, 2012.

28. Prior to August 1, 2012, construction shall begin for the following turn lane:
- Eastbound left turn lane at the proposed Pierson Road driveway to Parcel 30C-3 with a minimum of 280 feet of storage and a 50 foot taper.

Construction of the turn lane shall be completed prior to November 1, 2012.

29. Prior to August 1, 2012, construction shall begin on the east and west approaches of the intersection of Pierson Road and South Shore Boulevard. At a minimum, the geometry of the intersection shall include the following:

East Approach	West Approach
Separate left turn lane with 280 feet of storage	Separate left turn lane with 370 feet of storage
Shared through and right turn lane	Shared through and right turn lane

Construction of these improvements shall include any required signal modifications and right-of-way acquisition. Construction shall be completed prior to November 1, 2012.

30. Prior to August 1, 2012, the applicant shall submit a queuing analysis of the southbound left turn lane on South Shore Boulevard for the existing driveway to the property and the northbound left turn lanes at the intersection of Greenvew Shores Boulevard and South Shore Boulevard. The analysis will be based on existing peak season counts and queuing data. If deficiencies are found for either turn lane, the turn lane shall be extended. The monitoring shall continue on an annual basis until 24 months after the last Certificate of Occupancy for the project. If the queues ever cannot be accommodated, no additional building permits shall be issued.

TRAFFIC AND PARKING

31. Traffic and parking control attendants may be employed on-site for non-peak events. PBSO shall be provided on-site during peak events expected to draw more than 1,000 spectators. PBSO shall be provided with anticipated start and stop times for the event along with the estimated number of participants and spectators at least two weeks prior to the peak events.
32. Adequate ingress and egress directly to and from South Shore Boulevard and Pierson Road shall be maintained at all times and shall not disrupt normal traffic circulation patterns.

1 **33.** Regardless of the number of rings, arenas or venues operating, the maximum
2 number of spectators permitted at the commercial equestrian arena at any time
3 is 3,500 persons.

4 **SIGNS**
5

6 **34.** The owner shall submit a Master Sign Plan for review and approval by staff
7 and Wellington's Architectural Review Board (ARB).
8

9 **PLATTING**
10

11 **35.** The owner shall record the plat of the 59.3 acre property for the Commercial
12 Equestrian Arena prior to March 31, 2012.
13

14 **INFRASTRUCTURE**
15

16 **36.** Any improvements within easements to be dedicated to Wellington or within
17 public canals and/or road right of ways shall require 110% surety prior to
18 commencement of construction. (ENGINEER)

19 **SITE DESIGN**

20 **37.** The Commercial Equestrian Arena and all permanent structures shall be
21 subject to Section 6.5.19.I Design Standards and Section 6.10.11 Commercial
22 Development Standards in the Equestrian Overlay Zoning District.
23
24
25

1
2
3 **NOW, THEREFORE, BE IT RESOLVED BY WELLINGTON, FLORIDA'S**
4 **COUNCIL that:**

5
6 **SECTION 2.** The foregoing recitals are hereby affirmed and ratified.
7


8
9 **PASSED AND ADOPTED** this 2nd day of February, 2012.
10

11 **RENDERED** the 13th day of February, 2012.
12


13 **ATTEST:**

WELLINGTON

14
15 By: 
16
17 Awilda Rodriguez, Wellington Clerk
18

By: 
Darell Bowen, Mayor

19 **APPROVED AS TO FORM**
20 **AND LEGAL SUFFICIENCY**

21
22 By: 
23
24 Jeffrey S. Kurtz, Attorney for Wellington
25
26

NOTICE OF INTENT TO SUSPEND DEVELOPMENT ORDERS

In accordance with Chapter 9 of the Village of Wellington Unified Land Development Code (the "ULDC"), "Compliance with Time Limitations and Conditions of Approval," subsection 5.9.3.A.3., the Village of Wellington hereby issues its notice of intent to suspend development orders for the property known as Wellington Country Place Planned Unit Development located in the eastern half of section 20 and all of section 21.

The legal description of the subject property is as follows: being the East ½ of Section 20, Township 44 South, Range 41 East and Section 21, Township 44 South, Range 41 East; less that part of the Southwest ¼ of said Section 21 described as follows: beginning at the Southwest corner of said Section 21; thence North 00 51' 13" East, along the West line of said Section 21, a distance of 1391.0 feet; thence South 89 17' 17" East, a distance of 1490.0 feet; thence South 00 51' 13" West, parallel with the West line of said Section 21, distance of 1386.26 feet, to the South line of said Section; thence Westerly along the South line of said Section 21, a distance of 1490.02 feet to the Point of Beginning, Less plats recorded as follow: Plat book 37, Pages 123-124; Plat book 38, page 190-191; Plat book 39, page 19-22; Plat book 56, pages 87-88; Plat book 60, pages 143-144; Plat book 61, pages 112-113; Plat book 61, pages 114-115; Plat book 64, pages 187-189; Plat book 64, pages 193-195; Plat book 64, pages 190-192; Plat book 66, page 46; Plat book 66, page 98-99 and Plat book 68, pages 156-157.

Time certain conditions of approval contained in Resolution No. R2012-08, involving the Equestrian Village Compatibility Determination, have not been timely met by the property owner. The specific time certain conditions of approval that have not been completed follow: Condition No. 3 of Resolution R2012-08 which requires the property owner to apply for a setback variance for the existing cell tower by May 1, 2012 and Condition No. 35 which requires that the proposed plat of the 59.3 acre property be recorded by March 31, 2012. Pursuant to Section 5.9.3 of the ULDC, a status review of this project will be conducted by the Village Council on May 22, 2012. Until the review is completed by the Village Council, no new development orders shall be issued by the Village of Wellington for this property. After its review, the Village Council has the discretion to grant an extension of time to comply, modify or eliminate the approval condition, or to rescind the project approval.

Until this review is completed and action taken to release the property from this notice, the Village of Wellington will not issue any new development orders for the subject property. Any questions about this notice should be directed to the Village of Wellington Planning, Zoning and Building Department.

Dated this 4TH day of May, 2012

Robert E. Basehart
ROBERT E. BASEHART
Growth Management Director

STATE OF FLORIDA)
COUNTY OF PALM BEACH)

SWORN TO and subscribed before me this 4th day of May 2012, by ROBERT E. BASEHART, who is personally known to me or who produced _____ as identification and who did/did not take an oath.

Jennifer Fritz
NOTARY PUBLIC, STATE OF FLORIDA

Jennifer Fritz
Print, Type, or Stamp Name of Notary

My Commission Expires:



MINUTES

REGULAR MEETING OF THE WELLINGTON COUNCIL Wellington City Hall 12300 Forest Hill Blvd. Wellington, Florida 33414

**Tuesday, February 28, 2012
7:00 p.m.**

Pursuant to the foregoing notice, a Regular Meeting of the Wellington Council was held on Tuesday, February 28, 2012 commencing at 7:00 p.m. at Wellington City Hall, 12300 Forest Hill Boulevard, Wellington, FL 33414.

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

Advisors to the Council: Paul Schofield, Manager, Jeffrey S. Kurtz, Esq., Attorney, Awilda Rodriguez, Clerk, John Bonde, Deputy Manager, Francine Ramaglia, Assistant Manager, and Jim Barnes, Director of Operations,

1. **CALL TO ORDER** – Mayor Bowen called the meeting to order at 7:00 p.m.
2. **PLEDGE OF ALLEGIANCE** – Mr. Raymond Wess, Sons of the American Revolution, led the Pledge of Allegiance.
3. **INVOCATION** - Rachel Lever, Assistant to the Pastor, St. Peter's United Methodist Church led the Pledge of Allegiance.
4. **APPROVAL OF AGENDA**

Mr. Schofield presented the agenda recommending approval with the following amendments: (1) remove item 8C – Resolution No. 2012-15 (Addendum to Florida Atlantic University Agreement) from the Agenda for further review; (2) move Consent Agenda item 6G – Resolution No. R2012-18 (Polo Village II Plat) to the Regular Agenda which would then become item 8C; (3) changes to item 6F – Resolution No. R2012-17 (Grand Prix Village South Plat); and (3) minor corrections to the Minutes.

A motion was made by Mayor pro tem Priore, seconded by Councilman Coates, and unanimously passed (5-0) approving the agenda as amended: (1) remove item 8C – Resolution No. 2012-15 (Addendum to Florida Atlantic University Agreement) from the Agenda for further review; (2) move Consent Agenda item 6G – Resolution No. R2012-18 (Polo Village II Plat) to the Regular Agenda which would then become item 8C; (3) changes to item 6F – Resolution No. R2012-17 (Grand Prix Village South Plat); and (3) minor corrections to the Minutes.

5. PRESENTATIONS AND PROCLAMATIONS

A. PRESENTATION BY THE PALM BEACH, FLORIDA CHAPTER OF THE NATIONAL SOCIETY OF THE SONS OF THE AMERICAN REVOLUTION

Mr. Schofield introduced the agenda item. He announced that Mr. Raymond Wess, Registrar and Flag Chairman for the Palm Beach, Florida Chapter of the National Society of the Sons of the American Revolution would be making the presentation.

Mr. Wess introduced himself to the Council. He said that he was in attendance to present to Wellington their Certificate of Commendation and Recognition of Exemplary Patriotism for the Display of the American Flag of the United States which is one of their highest honors and awards. Mr. Wess explained why this is one of their highest awards and went on to present the history of the flag. He said that as a citizen of Wellington he has seen the flag flying during peace, war, recession, and other problems; yet during those times, the flag still stands. Mr. Wess believed that Americans must always focus on the statement "the flag still stands." He said that they will never surrender, give up and opinions may differ, but at the end of the day, they are all Americans and the flag still stands.

Mr. Wess presented the award to Council thanking them and the citizens of Wellington for their patriotism.

B. EMPLOYEE OF THE MONTH THROUGH THE EMPLOYEE RECOGNITION PROGRAM

Mr. Schofield introduced the agenda item. He recognized Ms. Nicole McPherson as Wellington's January 2012 Employee of the Month. Mr. Schofield stated that Ms. McPherson works as a Geographic Information System (GIS) Analyst and is certified as a Geographic Information System Professional (GISP). He stated that her co-workers stated that Nicole can create a custom map in 3 minutes or less and bake brownies for them. Mr. Schofield said that Nicole is excellent at everything that she does and every department in the Village has benefitted from her expertise, work ethic and friendly attitude.

Council presented the Employee of the Month Award to Nicole McPherson.

C. PRESENTATION OF WELLINGTON'S LEED GOLD CERTIFICATION BY THE U.S. GREEN BUILDING COUNCIL

Mr. Schofield introduced the agenda item. He announced that the following representatives were present to make the presentation to the Council: The Weitz Company: Chuck Congdon – Senior Project Manager and John Tori, Senior Vice President; Leo a. Daly: Paul Twitty, Vice President and Michael D. Rodebaugh, Project Manager; The Spinnaker Group, Inc.: Rob Hinck, Principal, Virginia Hinck, President and Linda Smithe, Project Manager.

Mr. Rob Hinck announced that he was representing the U.S. Green Building Council in his capacity as Past President. He read a letter from Rick Fedrizzi, Founding Chairman, of that organization congratulating Wellington on achieving leadership in environmental design certification for its City Hall. Wellington's LEED rating reflected 61 documented and approved points which corresponded to the Gold Certification Level under the LEED for New Construction Rating System.

Representatives of the U.S. Green Building Council presented Council with a plaque and certificate recognizing Wellington for its impressive achievement.

Mr. Hinck announced that Wellington's Municipal Complex was the first one in Palm Beach County and the second in South Florida to be LEED certified.

Mr. Schofield announced that Wellington had been notified that day that they were designated as a Gold City. Ms. Ramaglia explained that Wellington had been notified that afternoon by the USGBC

that Wellington was a Gold Certified City. She said that the application for this was extensive taking about six months to complete. Ms. Ramaglia further stated that this is a very prestigious honor and noted that a press release would be forthcoming on this recognition. Mr. Schofield said that this recognition came as a result of Council approving projects and selected programs for the Village, i.e., Wellington Environmental Preserve, Peaceful Waters and other such programs.

6. CONSENT AGENDA

- A. MINUTES OF THE REGULAR WELLINGTON COUNCIL MEETINGS OF NOVEMBER 29, 2011 AND DECEMBER 13, 2011**
- B. RESOLUTION NO. R2012-16 (WELLINGTON REGIONAL MEDICAL CENTER VACATION/ABANDONMENT): A RESOLUTION OF WELLINGTON, FLORIDA'S COUNCIL AND BOARD OF SUPERVISORS OF THE ACME IMPROVEMENT DISTRICT TO VACATE, ABANDON, DISCONTINUE AND CLOSE TWO SEWER EASEMENTS TOTALING APPROXIMATELY 14,345 SQUARE FEET, LOCATED ON THE SOUTHWEST PORTION OF THE WELLINGTON REGIONAL MEDICAL CENTER CAMPUS (ADDRESS: 10101 FOREST HILL BOULEVARD) AND PROVIDING AN EFFECTIVE DATE.**
- C. RESOLUTION NO. R2012-19 (CASTELLINA REPLAT): A RESOLUTION OF WELLINGTON, FLORIDA'S COUNCIL ACCEPTING AND APPROVING THE CASTELLINA PLAT BEING A REPLAT OF A PORTION OF THE LANIER PROPERTY AS RECORDED IN PLAT BOOK 108, PAGES 75 THROUGH 91, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, LYING IN SECTION 13, TOWNSHIP 44 SOUTH, RANGE 41 EAST, VILLAGE OF WELLINGTON, PALM BEACH COUNTY, FLORIDA.**
- D. RESOLUTION NO. R2012-20 (ISLA VERDE OF WELLINGTON COMMERCIAL REPLAT): A RESOLUTION OF WELLINGTON, FLORIDA'S COUNCIL ACCEPTING AND APPROVING THE ISLA VERDE OF WELLINGTON COMMERCIAL PLAT BEING A REPLAT OF TRACT E, ISLA VERDE OF WELLINGTON, AS RECORDED IN PLAT BOOK 110, PAGES 132, TOGETHER WITH PORTIONS OF TRACT L AND PARCEL A, ISLA VERDE OF WELLINGTON RESIDENTIAL, AS RECORDED IN PLAT BOOK 111, PAGES 200-204, ALL OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, LYING IN SECTIONS 6 AND 7, TOWNSHIP 44 SOUTH, RANGE 42 EAST, VILLAGE OF WELLINGTON, PALM BEACH COUNTY, FLORIDA.**
- E. RESOLUTION NO. R2012-21 (ENCLAVE WATER AND WASTEWATER EASEMENTS): A RESOLUTION OF WELLINGTON, FLORIDA'S COUNCIL, ACTING AS THE BOARD OF SUPERVISORS OF THE ACME IMPROVEMENT DISTRICT, ACCEPTING AND APPROVING THE WATER AND WASTEWATER EASEMENTS AS DEPICTED ON THE PROPOSED PLAT FOR THE ENCLAVE DEVELOPMENT LYING IN SECTION 1, TOWNSHIP 44 SOUTH, RANGE 41 EAST, VILLAGE OF ROYAL PALM BEACH, PALM BEACH COUNTY, FLORIDA.**
- F. RESOLUTION NO. R2012-17 (GRAND PRIX VILLAGE SOUTH PLAT): A RESOLUTION OF WELLINGTON, FLORIDA'S COUNCIL ACCEPTING AND APPROVING THE GRAND PRIX VILLAGE SOUTH PLAT BEING A PLAT OF A 79.63 ACRE PARCEL LYING IN SECTION 20, TOWNSHIP 44 SOUTH, RANGE 41 EAST, VILLAGE OF WELLINGTON, PALM BEACH COUNTY, FLORIDA.**

~~G. RESOLUTION NO. R2012-18 (POLO VILLAGE II PLAT): A RESOLUTION OF WELLINGTON, FLORIDA'S COUNCIL ACCEPTING AND APPROVING THE POLO VILLAGE II PLAT FOR A 96.11 ACRE PARCEL LYING IN SECTION 16, TOWNSHIP 44 SOUTH, RANGE 41 EAST, VILLAGE OF WELLINGTON, PALM BEACH COUNTY, FLORIDA. MOVED TO THE REGULAR AGENDA.~~

H. AUTHORIZATION TO CONTINUE UTILIZATION OF CONTRACTS FOR THE LEASE, PURCHASE, MAINTENANCE AND SERVICE OF OFFICE MULTIFUNCTIONAL COPYING EQUIPMENT

Mr. Schofield presented the Consent Agenda recommending approval as amended with item 6G being moved to the Regular Agenda.

A motion was made by Mayor pro tem Priore, seconded by Councilman Coates, and unanimously passed (5-0) approving the Consent Agenda as amended with Item 6G being moved to the Regular Agenda.

7. PUBLIC HEARINGS

A. ORDINANCE NO. 2012-05 (ANNEXATION OF NINE (9) PARCELS WITHIN THE WELLINGTON MEDICAL ARTS DISTRICT TOTALING APPROXIMATELY 71.5 ACRES PURSUANT TO FLORIDA STATUTES CHAPTER 171): AN ORDINANCE OF WELLINGTON, FLORIDA'S COUNCIL, PROPOSING THE ANNEXATION, PURSUANT TO CHAPTER 171 OF THE FLORIDA STATUTES (2011), OF REAL PROPERTY COMPRISING 71.5 ACRES, MORE OR LESS IN PALM BEACH COUNTY, FLORIDA, KNOWN AS THE "MEDICAL ARTS DISTRICT", (MORE PARTICULARLY DESCRIBED HEREIN) WHICH IS CONTIGUOUS, COMPACT AND UNINCORPORATED AREA ADJACENT TO WELLINGTON'S BORDERS, LOCATED ON THE WESTSIDE OF STATE ROAD 7 APPROXIMATELY ONE (1) MILE NORTH OF FOREST HILL BOULEVARD IN PALM BEACH COUNTY, FLORIDA; DETERMINING THAT THE PREREQUISITIES TO ANNEXATION HAVE BEEN MET; DETERMINING THAT THAT THE CHARACTER OF THE AREA TO BE ANNEXED IS APPROPRIATE FOR ANNEXATION INTO WELLINGTON; DETERMINING THAT A REFERENDUM ON ANNEXATION WITHIN THE AREA PROPOSED TO BE ANNEXED IS UNNECESSARY; PROVIDING AN EFFECTIVE DATE FOR THE ANNEXATION OF THE PROPERTIES; PROVIDING THAT SECTION 11 OF THE VILLAGE CHARTER SHALL BE AMENDED BY REDEFINING THE CORPORATE LIMITS OF WELLINGTON; DIRECTING THE WELLINGTON MANAGER TO DO ALL THINGS NECESSARY TO PROVIDE FOR AND EFFECTUATE THIS ANNEXATION; DIRECTING THE WELLINGTON CLERK TO FILE A COPY OF THIS ORDINANCE WITH THE CLERK OF THE CIRCUIT COURT IN PALM BEACH COUNTY, THE CHIEF ADMINISTRATIVE OFFICER OF PALM BEACH COUNTY, AND WITH THE DEPARTMENT OF STATE AFTER THE ANNEXATION BECOMES EFFECTIVE; PROVIDING A CONFLICTS CLAUSE AND A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE (2011-005 ANX).

Mr. Schofield introduced the agenda item. Ms. Rodriguez read the ordinance title. Mr. Schofield announced that Mr. Tim Stillings would be making the presentation.

Mr. Tim Stillings, Long Range Planning Director, announced that Wellington was initiating the annexation of nine (9) parcels owned by four entities in the Wellington Medical Arts District located at the northwest corner of SR7 and Forest Hill Blvd. He noted that the properties were comprised of

approximately 71.5 acres with two parcels owned by Palm Beach County, two parcels owned by Four Four One Partners, three owned by Venra Development and two owned by Wellington Storage. Mr. Stillings stated that the uniform method of annexation was being utilized which requires Wellington to obtain consent from 50% of the parcels as well as more than 50% of the owners of the property within the annexation area. He further stated that the annexations were also a condition of the CRALLS approval by the Palm Beach County Board of County Commissioners on October 25, 2010. He noted that at this point staff was working with two of the property owners on their consent to achieve the 50% or greater of acres and parcels requirement. Mr. Stillings said that he was available to answer Council's questions.

Public Hearing

A motion was made by Mayor pro tem Priore, seconded by Councilman Coates, and unanimously passed (5-0) to open the Public Hearing.

1. Eric Taub, 1215 Creekside Drive, Wellington. Mr. Taub said that he was opposed to the annexation and development of two particular parcels that were being presented. He indicated that he lived in the community that bordered the parcels and expressed concern about the impact the development would have on his community. He noted that they have lost many acres of landscaped borders that gave them the preserve-like nature which was the reason the homeowners bought in that neighborhood and why they moved to Wellington. Mr. Taub spoke of the loss of green space throughout the Village in favor of commercial development many of which remain vacant. Although Wellington was calling this the Medical Arts District, Mr. Taub questioned how many more medical buildings were needed in Wellington noting the large number located along 441 which are vacant. He spoke of how the increase in traffic arising from this annexation would negatively impact his neighborhood's ingress and egress. He then asked Council what happened to the Wellington that they moved to, and questioned the rush and need for all of the commercial development. He said that if another needless development was built, he would be left with the impression that a non-resident developer carried more weight in the Village than a full-time resident which he hoped was not the case.

Mayor pro tem Priore asked what the current zoning is on the property. In response, Mr. Schofield explained that some of the properties are zoned for hospital, some for office and some were still zoned for residential. Mr. Stillings explained that the two County pieces and Four Four One Partners were zoned LR/2 (low residential two units to the acre); the Wellington Storage was Commercial High and Venra was Commercial High Office.

Mayor pro tem Priore said that without any zoning changes, the individuals that owned that property could construct two homes for every acre of the property with the associated access points. Mr. Stillings said that was correct. Mayor pro tem Priore then asked what would be the total impact if that were to occur and how many homes could be built. Mr. Barnes said that for the LR/2 units, 122 homes could be built within the three designated land use properties. Mayor pro tem Priore said that if this property was left without the changes, these individuals could come in and request permits and build houses. He stressed that the property was not a Preserve and those properties belong to someone who ultimately wants to use it. He said that Wellington has developed and grown as was anticipated by Wellington's founders, and the properties that had been vacant was ultimately built on. He said that the Planned Unit Development was never intended to remain vacant unless it had been designated as an open preserve area. Mayor pro tem Priore further stated that these property owners have a land use right, and when actions are taken, they make the decision what is best for the use of their property.

There being no further public comments, a motion was made by Vice Mayor Willhite, seconded by Councilman Coates, and unanimously passed (5-0) to close the Public Hearing.

Vice Mayor Willhite said that in order to square off the Village's boundaries and control the property, the development and growth could potentially help the residents. He explained that the plan was only a proposed one, and he thought that certain changes could be made to it that could help the surrounding residential neighbors. He felt that Wellington controlling that property provides the community with a better comfort level in that they have a voice as to the setbacks and development in the future versus the County who presently controls it. Vice Mayor Willhite advised Mr. Taub that he should not look at this annexation as a bad thing because Wellington has the ability to look at what is best for the residents if they control it. Mr. Stillings added that this was just a conceptual plan showing how the proposed program could fit on the site noting that it has a lot of flexibility.

Councilwoman Gerwig asked Ms. Stillings how long the Medical Arts Plan has been in process. In response, Mr. Stillings believed that this has been underway for approximately three years.

Vice Mayor Willhite asked Mr. Schofield to explain this process. Mr. Schofield explained that this is the beginning step of the annexation process. He said that the property owners still have to consent, and it is Wellington's intention to obtain the consent from every property owner. He noted that under the State Statute the annexation can occur if more than 50% of the property owners representing more than 50% of the property then it can occur. Mr. Schofield reiterated that this process puts Wellington in the position where they can begin to collect the consent, present it to the County for review; however, this hearing does not actually annex any property.

At this point, a conceptual plan was displayed. Vice Mayor Willhite pointed out that a large portion of this parcel abutted water which provides a large setback. He noted that since this was only a conceptual plan, there was the possibility to move a lake that is located in the middle of this area to the outside.

Mr. Schofield reminded everyone that this was only a conceptual plan that was only done to see if things could fit. He said that at the northwest corner, there is a medium to good quality wetland and there will be a lot of preservation in there as opposed to the buildings that were shown.

Councilman Coates said that even with annexation, these properties will still be individually owned and they are the ones who ultimately decide what is on their property. He said that in order for this conceptual plan to work all of the property owners would ultimately all have to be on board. Mr. Schofield responded affirmatively.

A motion was made by Mayor pro tem Priore, seconded by Councilwoman Gerwig, and unanimously passed (5-0) approving Ordinance No. 2012-05 on First Reading as presented.

Mr. Schofield reminded Council that this was the first of two required readings and it did not effectuate the annexation.

At this point, a member of the public indicated that he wanted to speak on this item. Mr. Kurtz advised Council that they had already voted on the matter, but they could take the public comment. He said that if they wished to reconsider their decision after hearing his comments, it would then be appropriate to open the Public Hearing at that time.

1. Robert Mierzejewski, 1209 Creekside Drive, Wellington. Mr. Mierzejewski spoke in opposition to the annexation. He noted that he purchased his house relying on the fact that the realtor said it would remain a preserve. He said that once all of the trees started to be cut down, his neighborhood received an influx of animals which caused damage to their homes. They also had to incur the expense to have someone come in to trap the animals. Mr. Mierzejewski was of the opinion that there would be airborne germs from the hospital which he was afraid would affect their community and was a health hazard.

8. REGULAR AGENDA

A. AWARD OF CONTRACT FOR THE CONSTRUCTION OF THE NEW BOYS AND GIRLS CLUB FACILITY

Mr. Schofield introduced the agenda item. He announced that Mr. Barnes would be making the presentation.

Mr. Barnes explained that this item was the approval to award the contract for MBR Construction Inc. for the construction of the new Boys and Girls Club facility located on Wellington Trace in the amount of \$3,585,371. He said that prior to the last Agenda Review, there had been some discussion as to the different items that may have contributed to the project coming in slightly higher than the originally estimated amount for which the Riviera Beach facility was constructed. Mr. Barnes pointed out that those items were outlined on page 430 of the Agenda Packet. He said that based on a review by staff and the Boys and Girls Club, they recommended approval of the award to MBR Construction in the amount of \$3,585,371. Mr. Barnes stated that representatives of the Boys and Girls Club were present to address this item.

Ms. Mary O'Connor, President and CEO of the Boys and Girls Clubs of Palm Beach County, said that they have been in Wellington for 25 years and have served thousands of children during that span of time. She said that many children who grew up in their facility have gone on to become doctors, architects, engineers, etc. and were now coming back to help them. Ms. O'Connor said that there were some members of Council who were present when they opened up the 4,000 square foot facility noting that they added some square footage several years ago expanding the building to 7,000 square feet. She announced that last year the Boys and Girls Club served 525 children at that facility. Ms. O'Connor pointed out that there are 13 clubs throughout Palm Beach County and they turn away more children in the Village of Wellington than at any other club. She said that the reason for this is that their present facility does not allow them to take on any more children whereas the new facility which will be over 22,570 square feet will allow them to take on additional children as well as to provide so many other services, i.e., state-of-the-art computer lab, dance studio, science lab, full gym and other such services. Ms. O'Connor said that they were very excited about this new facility and were waiting for the day when it opens. She said that the vast number of children that the Boys & Girls Club serves would go home alone and spend time unsupervised. She said that their goal for the future is to raise the dollars so that they don't turn children away. Ms. O'Connor further stated that they were also excited because this new facility will attract the teenage population who she felt is the forgotten generation. She said that as they opened other facilities similar to the proposed one in Wellington, the teenage population increased dramatically. Ms. O'Connor said that even when Wellington was Acme, they have always supported the Boys and Girls Club which they greatly appreciated. She said that over the next 25 years, the budget for the new facility will be about \$800,000 a year so they are truly partners in that they are bringing a huge investment to the children of Wellington and are raising dollars that will help those children. She noted that they plan on working with Wellington's Recreation Department so that they utilize the facility to its greatest potential. Ms.

O'Connor said that a member's mother was present who could speak to them about her experience with the Boys and Girls Club.

Mayor pro tem Priore wanted to hear from the mother because he felt it was important for the community to hear that the joint Interlocal Agreement that Wellington has with the Boys & Girls Club is considerably more money if they had to provide it than the taxpayers would have to underwrite.

Councilwoman Gerwig thanked Ms. O'Connor for the concentration on the teen effort which she felt has been a problem in Wellington. She thought that having a place for the teens to go where they would be safe and could do something constructive would be beneficial.

At this point, Council was addressed by a single parent who has an eight year old daughter who joined the Boys and Girls Club last summer. She spoke of how happy she was that she made the decision to enroll her in the Club, and the impact it has had on her life as well as other families of the Club. She hoped that Council would see that this is a necessary move that many people would benefit from.

Public Comments

1. Sam Nebb. Mr. Nebb felt that the Boys and Girls Club was a wonderful entity deserving of this new facility; however, he was concerned with what would happen to the park where the present Boys and Girls Club is located. He hoped that the park does not meet the same fate as K-Park, and questioned why the Club was moving which would leave that entire area of South Shore with the exclusion of the fire house in the hands of the Equestrian Partners.

Mayor pro tem Priore advised Mr. Nebb that there were extensive plans for that property that will make it more enhanced than it presently is.

Mayor Bowen asked Mr. Schofield to address the plans for that property. In response, Mr. Schofield stated that the only thing that is contemplated being moved from that property is the Boys and Girls Club itself as the building has far exceeded its useful life. He said that the seven baseball fields will remain there, and that it is Wellington's intention for the property to continue serving as a park. He pointed out that there is a deed restriction on the land stating that it can only be a park or it has to have a public purpose, and if it is used for anything other than that, it would revert back to the original owner who is Palm Beach County. Mr. Schofield said that there was no intention on the part of Council to convey that property to anyone else as it is a significant part of Wellington's baseball program. He said that Wellington could not run the recreational programs that are currently in place without that park. Mr. Schofield further stated that money was budgeted this year for some improvements noting that over the past few years they have been making some improvements to bring it to the standards of the other parks.

Mayor Bowen read the following cards into the record:

1. Janna Zaidspinek, 15694 Bent Creek Road: Ms. Zaidspinek supported the Boys and Girls Club.
2. Ed Portman, 832 Lantern Tree Lane. Mr. Portman supported the Boys and Girls Club.

A motion was made by Mayor pro tem Priore, seconded by Vice Mayor Willhite, and unanimously approved (5-0) awarding the contract for construction of the Boys and Girls Club Facility to MBR Construction in the amount of \$3,585,371

B. ORDINANCE NO 2012- 08 (CHANGES TO CHAPTER 18 OF WELLINGTON CODE OF ORDINANCES): AN ORDINANCE OF WELLINGTON, FLORIDA'S COUNCIL, RELATING TO BUILDING CODES AND THE ADOPTION OF THE 2010 EDITION OF THE FLORIDA BUILDING CODE AS REQUIRED BY STATE STATUTE; ADOPTING A LOCAL ADMINISTRATION SECTION AS PROVIDED FOR IN THE STATE BUILDING CODE BASED UPON THE BUILDING CODE ADVISORY BOARD OF PALM BEACH COUNTY MODEL AND BUILDING OFFICIALS ASSOCIATION OF FLORIDA MODEL; AMENDING SEC. 18.31 (1), (2) AND (3) REGARDING THE ADOPTION OF THE GROUP OF CODES KNOWN AS THE 2010 FLORIDA BUILDING CODE, INCLUDING THE: BUILDING, RESIDENTIAL, EXISTING BUILDING, ACCESSIBILITY, MECHANICAL, PLUMBING, FUEL GAS, THE NATIONAL ELECTRICAL CODE, THE FLORIDA FIRE PREVENTION CODE AS AMENDED BY PALM BEACH COUNTY, INTERNATIONAL PROPERTY MAINTENANCE CODE; REPEALING AND READOPTING SEC. 18.32, WELLINGTON BUILDING CODE ADMINISTRATIVE CODE, IN ITS ENTIRETY; AMENDING SEC. 18.33 AMENDMENTS TO THE FLORIDA BUILDING CODE TO REFERENCE THE CHANGED SECTION REFERENCES OF THE STATE BUILDING CODE AND ADOPTING A WINDSPEED MAPS; PROVIDING FOR CODIFICATION; PROVIDING AN ADOPTION DATE; PROVIDING A CONFLICTS CLAUSE; PROVIDING A SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

Mr. Schofield introduced the agenda item. Ms. Rodriguez read the ordinance title. Mr. Schofield explained that Wellington is required by Florida Statute to adopt the Florida Building Code. He further explained that the legislature has been late in adopting the national version of the building code, and as a result of that, Wellington's Insurance Service Organization (ISO) rating along with that of many other municipalities has been impacted. He stated that this adoption will bring Wellington's ISO rating back to its previous levels which should also result in better premium levels for every homeowner in Wellington. Mr. Schofield pointed out that Wellington is required to adopt the State Code almost as it is written; however, there are some things that can be done under the Administrative sections. He stated that Mr. Kurtz would also address this item.

Mr. Kurtz explained that this is a process that the Village undergoes every three or so years as the codes change. He further explained that the ordinance is divided into three sections. The first section is adopting the Building Code including the accessibility residential and existing buildings code which is different than in the past. Secondly, it adopts the Administrative Code section explaining that on this reading, the changes have been shown in legislative format versus what presently exists. On second reading they will not see the legislative format since it is being repealed in its entirety and was being readopted. At this point, Mr. Kurtz introduced Mr. Jacek Tomasik, Building Official, to further address this item.

Vice Mayor Willhite asked what a homeowner would have to reference in order to lower their homeowners insurance. In response, Mr. Schofield said that the insurance companies will automatically be notified of the Building Department's ISO rating which will factor into their renewals. He said that most people would not be affected by it unless they had a renewal or change in policy. Mr. Schofield suggested that every homeowner who applies for insurance reminds their insurance company that Wellington has an ISO rating. He pointed out that every Building Department starts out with an ISO rating of 5; however, Wellington has a significantly better rating than that.

Mr. Tomasik explained that the ISO evaluates the Building Department's performance. He said that by Wellington adopting the Code, they demonstrate that they are in compliance. Mr. Tomasik said that ISO verifies Wellington's work every two years with the department producing reports and demonstrating the good work they have done. He said that based on their rating scale, a rating is

then given to Wellington which automatically gets applied to the insurance policies. Mr. Schofield noted that the only hit that the Building Department took in the last ISO rating was due to the failure to adopt the current version of the Building Code which could not have been done since the legislature had not done so.

Vice Mayor Willhite asked if Wellington could possibly produce a small segment for Channel 18 or the web page to ensure that residents are made aware that they can contact their insurance company about Wellington's rating. Mr. Schofield said that could be done.

Mr. Tomasik also advised Council that this is basically a new document. He explained that the State of Florida adopts the Florida Building Code 2010 on March 15, 2012, and every municipality is required to adopt this Code. He noted that there are several improvements explaining that the Code that was in front of Council is a connection of Wellington's existing Code that they have been enforcing since 2009. He explained the Building Code includes all suggestions from all building officials of Florida who developed a document that is universal as well as the Building Code Advisory Board of Palm Beach County. He explained that this document was also presented to the Construction Board of Wellington and includes all of the new amendments and additions that are required by the State. Mr. Tomasik further explained that this document adds the flood requirements for the municipality, adjustments and regulates more of an energy code which is part of the Florida Building Code, the accessibilities also has several codes which becomes a separate volume of the Building Code beginning on March 15th, and it adjusts the wind loads and wind resistance for all of the buildings that will be permitted beginning March 15th of this year. He explained that adopting this on March 15th also provides Wellington with the opportunity to modify Chapter One which is being geared towards specific Wellington needs.

Councilwoman Gerwig asked what was different about this Code. In response, Mr. Tomasik said that the majority of what he focuses on is that it allows Wellington to be a customer-friendly enforcer of the Code which applies to the extension of the building permits, renewal of the building permits that expire for several reasons, and allows the Building Department to work with the customer to their bring construction site to compliance without unnecessary penalties or situations where they may conflict with the Building Code.

A motion was made by Mayor pro tem Priore, seconded by Councilman Coates, and unanimously passed (5-0) approving Ordinance No. 2012-08 on First Reading as presented.

~~C. RESOLUTION NO. 2012-16 (ADDENDUM TO FLORIDA ATLANTIC UNIVERSITY AGREEMENT): A RESOLUTION OF WELLINGTON, FLORIDA'S COUNCIL AUTHORIZING THE MAYOR AND CLERK TO EXECUTE AN ADDENDUM TO AN AGREEMENT BETWEEN WELLINGTON AND FLORIDA ATLANTIC UNIVERSITY; AND PROVIDING AN EFFECTIVE DATE. REMOVED FROM THE AGENDA.~~

C. RESOLUTION NO. R2012-18 (POLO VILLAGE II PLAT): A RESOLUTION OF WELLINGTON, FLORIDA'S COUNCIL ACCEPTING AND APPROVING THE POLO VILLAGE II PLAT FOR A 96.11 ACRE PARCEL LYING IN SECTION 16, TOWNSHIP 44 SOUTH, RANGE 41 EAST, VILLAGE OF WELLINGTON, PALM BEACH COUNTY, FLORIDA.

Mr. Schofield introduced the agenda item. Ms. Rodriguez read the resolution title. Mr. Schofield explained that this was a plat that establishes two parcels and does not confer additional development rights, and does not impact permitting noting that the permits for the barns and dressage rings had already been permitted under the existing zone. He further explained that this also has no impact on

the Comprehensive Plan Amendment that was submitted to the Department of Economic Opportunity for review which has not yet been returned from the State which will require one more public hearing for the Comprehensive Plan Amendment, two hearings for any associated zoning text amendments and a separate hearing for the Master Plan and other uses. Mr. Schofield anticipated that process will take a minimum of four more months and then there will be three public hearings. He noted that Mr. Bill Riebe, Village Engineer, was present to address any questions.

Mr. Kurtz added that the parcel has within it a limited access easement. He said that the access points into the property will be identified through further driveway permits to the extent that those permits do not already exist. He said that they were suggesting that the approval of the plat be conditioned upon the applicant supplying him with a copy of the Equestrian Village Property Owners Association documents, and that he then finds them to be in compliance with Wellington's Code. He further stated that there is one title issue that they have to clarify noting that there is a reference to a deed by C. Oliver Wellington from the Acme Improvement District. Mr. Kurtz said that in conversations with the attorney who is doing the title work, they indicated that is not an encumbrance on the property and should not be reflected on the plat. He said that they will be sending Wellington confirmation of that.

With regard to the conditions, Vice Mayor Willhite felt that Council was being asked to approve something that Mr. Kurtz had not yet approved. Mr. Kurtz responded stating that he had been supplied with the Property Owners Association documents to review. He said that he still has the question about the title. In light of that, Vice Mayor Willhite asked Mr. Kurtz if he had a question or concern about Council approving this plat. Mr. Kurtz explained that the Property Owners Association documents should not be very complex and he did not anticipate any problems with them. With respect to the title work, he explained that it was only a matter of the title work being supplied to him which would result in the removal of the C. Oliver Wellington deed from the plat. Mr. Kurtz further stated that he was comfortable reviewing those items and Council conditioning the final plat approval and recording of the plat on those items being satisfactory. He said if the result was that they were unsatisfactory and they were unable to resolve those issues, then they would bring it back to Council.

Vice Mayor Willhite asked if the plat would not be signed by anyone until Mr. Kurtz has approved those items in question. Mr. Kurtz responded affirmatively.

Vice Mayor Willhite asked if what was included in the agenda was only back-up information since he had raised some concerns when this issue was previously discussed. He questioned whether putting stipulations on it for entry ways and where roadways could go was part of the approval of this plat. Mr. Kurtz explained that the plat has to conform with the master plan which is why it was included. He said that staff reviewed the plat and believed that it complied with the master plan requirements.

Mayor pro tem Priore asked if the ingress and egress of the master plan coincided with the Polo Village Plat. Mr. Bill Riebe, Village Engineer, said that it would once the plat was approved and recorded. He said that the petitioners could then come in and apply for a driveway permit which will be issued pursuant to the guidelines in the master plan.

Vice Mayor Willhite questioned why this was named Polo Village II and asked where was Polo Village I. In response, Mr. Riebe explained that the Agenda Summary noted that this has been known as World Dressage as well as Equestrian Village; however, Polo Village II is the name that the petitioner wanted to use for this particular plat. He stated that Mr. Michael Sexton, Agent for the applicant, was present and might be able to better address this. Mr. Kurtz added that when plats are being named, they want to avoid names that have already been used so the names are wide open to the applicant.

Mr. Michael Sexton, Sexton Engineering representing the applicant of the plat, explained that the property to the north of Equestrian Village is Parcel A of Equestrian Polo Village and Complex of Palm Beach Polo and Country Club of Wellington. He explained that the name of this plat was determined a number of years ago with the White Birch property so the Polo Village II is just giving some continuity to the adjoining plat. He also noted that it includes a portion that was approved as the Commercial Equestrian Arena and the eastern portion is not part of Equestrian Village which is why they did not want to name it Equestrian Village since this is a 100 acre plat and the Equestrian Village is only 59.5 acres.

Public Comments

1. Amy Huber, 46 SW 1st Street, Miami, FL 33130, representing Charles and Kimberly Jacobs and Solar Sportsystems Inc., addressed Council. She said that she wanted to include the engineering, building and planning files for this property as part of the record. In addition, she wanted to include and incorporate all of their previous objections specifically related to Resolution No. R2012-07 and R2012-08 as well as the allegations contained in the companion complaint on those actions and the actions related to this property. Ms. Huber stated that a plat is a development order that can be challenged just as any other development order that was recognized in a Fourth DCA Case: Graves v. Pompano Beach which has similar factual standing as this property. In addition, she noted that the Florida Supreme Court recognized that the purpose of the plat act was to promote community planning. She further noted that Wellington's Code under Article 8 also recognizes that plats aid in the coordination of land development. Ms. Huber said that because the plat was in furtherance of development that they argued and alleged was inconsistent not only with Wellington's Comprehensive Plan, but also violated the Land Development Regulations, she felt that this plat was also inconsistent with the Comprehensive Plan and violated the Land Development Regulations and was void as a matter of law. She also felt the plat lacked adequate data and analysis and there were significant traffic and stormwater issues that had not yet been evaluated or addressed. She noted that Section 8.3.4 also reviews conformity with land use, density and concurrency regulations which they previously objected to and which they felt this application failed to address. Section 8.3.5 requires a site suitability analysis to take place which the record was void of. Ms. Huber was of the opinion that the plat could not be approved as a matter of law and requested denial of the application.
2. Carol Coleman, 14224 Stroller Way. Ms. Coleman believed that they were trying to rush something through that lacked all of the elements. She said that although Mr. Kurtz indicated that those would not be challenged, she questioned why they were rushing to get this approved at this time when they lacked all of the parts. She asked if it was something that had to be done within a certain period and if that was the case, she questioned why. Ms. Coleman thought it would be an easier process to wait until they have all of the pieces before voting on it. Secondly, she said that in the master plan, they had removed the word Polo and questioned why they were requesting it to be called Polo Village II. She thought that the whole purpose was to remove polo and now it was being put back in.

Vice Mayor Willhite asked when they were going to separate these two pieces of properties from the 59 acres since there are two different owners. Mr. Kurtz explained that the plat is the instrument that does that. Vice Mayor Willhite then asked what the two different names would be. Mr. Kurtz said that they would be Parcel I and Parcel II of Polo Village.

Vice Mayor Willhite questioned the infrastructure that had been included and asked if any development on this property would then accept the water management. Mr. Riebe explained that any existing water management on the property that circumscribes Polo Island tract is part and parcel of the overall development which includes the acreage as part of the plat. He said that the stormwater

management system that had been put in place was designed to accommodate the development of both of the parcels. Mr. Riebe noted that they have obtained all of the permits that were needed from the South Florida Water Management District to ensure that the stormwater management system remains intact and provides the level of service that was required.

Councilwoman Gerwig said that there appeared to be a new dedication for the water management easement and maintenance around the water, and asked if there had been plans when that was initially done. She said that it appeared that there was no underlining easement for this. Mr. Riebe said that the master stormwater management system was part of the overall Polo development. He said that this platting codified it. Councilwoman Gerwig asked if it was Wellington's obligation to know the history of this. Mr. Riebe said that they do know that the master stormwater system that is in place serves the properties. Councilwoman Gerwig said that it doesn't appear that any dedications were made. Mr. Riebe said that was correct. Councilwoman Gerwig asked if they would be getting additional information on that.

Mr. Schofield explained that the original permitting for the master water management system was done in the early 70's. He further explained that there was a modification to the master permit for the then Wellington PUD where Acme Improvement District accepted the maintenance for the lakes in that area which was done by Bink Glisson in 1978. Mr. Schofield said that through time, Wellington has taken those facilities that are purely private like this one and requires the underlying property owners to maintain the systems that benefit only them. He said that the original system was permitted, it had a maintenance entity which in many cases was Acme and Acme has no access to these. He reiterated that as these areas are platted and are done, they are then sent back to the underlying property owner who is the sole beneficiary of them. Mr. Schofield said that this lake did not provide a general benefit to Wellington residents as a whole and was not part of the system that they get credit for, but is the responsibility of the underlying property owner.

Mayor Bowen asked if it was common for Council to approve this plat with two outstanding issues that had been highlighted by Mr. Kurtz. He questioned why they hadn't been resolved as it appeared that neither issue was complicated. In response, Mr. Kurtz said that it was his understanding that the Property Owners Association documents do not have a final signoff at this point in time.

Mayor pro tem Priore questioned if the receipt of the Property Owners Association documents was critical to this resolution and were they legally required for this resolution to be approved. Mr. Kurtz said that it is required that an entity be in place that would be able to accept the dedications. He said that he was comfortable with Council approving the plat subject to the condition that those documents are submitted and they are found to be adequate after a review. With regard to how common it is to approve plats that do not have all of the elements presented at the time of approval, Mr. Kurtz said that over the last eight years, approximately 25% or 30% had some sort of condition associated with them that were not able to be signed off on that particular night.

Councilman Coates questioned whether those cases were because something had been determined the night they were being approved because he did not recall a situation where Council was presented with a plat that didn't have Mr. Kurtz' approval. He asked Mr. Kurtz what was Council's role with regard to the approval of plats. He said that it was his understanding that if Mr. Kurtz and staff deemed the plat to meet Wellington's regulations, Council did not have much of a role except to accept their recommendation and then to approve. In response, Mr. Kurtz said that Council always has the ability to question staff and sometimes they do point out things staff has not thought of. He said that for everyone the approval of a plat is a ministerial function and it is whether or not it meets the requirements of the code.

Councilman Coates said that he personally did not have a problem with the approval of the plat which he felt was consistent with what was decided; however, he wanted to ensure that everything with respect to this particular project proceeded in accordance with how Wellington has historically conducted business. He felt if they were doing something unusual or expediting the timing in a fashion that wasn't done for other applicants or plats, he wanted to know that. He said it appeared to him that perhaps they were doing that and putting it on a faster track. Councilman Coates thought that Mr. Kurtz would normally require all of the documents prior to it coming to Council. Councilman Coates questioned item No. 1 Compliance with Wellington Land Development Regulations. Mr. Kurtz explained that was a catch-all provision that Mr. Riebe has been including in the most recent plat approvals.

Councilwoman Gerwig asked if the water management area benefitted Polo Island specifically the existing canal system that creates an island. Mr. Sexton said that a portion of it is. Councilwoman Gerwig asked if they had a maintenance area included in their portion of the plat. Mr. Sexton explained that there was a maintenance area on their plat. He said that the existing lake system that surrounds Polo Island and is shown as part of the drainage dedication on this plat is part of the previous permit which he believed was the Lake 47 on the old South Florida Water Management District that Mr. Schofield had earlier addressed. He said that all of the other properties that abut this lake have been already platted, and when they platted them they placed drainage easements on them. He noted that this plat was not platted so as part of their platting process, they were providing those easements and providing the Property Owners Association documents to maintain those easements. Mr. Sexton explained that they have gone through the SFWMD permitting showing that the SFWMD permit modifications are consistent with the approvals that were given to the system that they were connecting to.

Mayor Bowen questioned when the Property Owners Association document and the title clarity were expected. He suggested if it was anticipated to only be a short period of time, that this be postponed to the next Council meeting. Mr. Kurtz said that the timing was such that it should be a matter of days noting that it was put on the agenda with the anticipation that it could have been resolved prior to the Council meeting.

Councilman Coates said that he did not want Council to be used as a political instrument in light of the present climate and he didn't want anyone accused of advancing this on a faster track than it would ordinarily take.

A motion was made by Councilman Coates, seconded by Vice Mayor Willhite, and unanimously passed (5-0) to table Resolution No. Resolution No. R2012-18, approval of the Polo Village II Plat, to the next Wellington Council Meeting scheduled for March 13, 2012.

9. PUBLIC FORUM

10. ATTORNEY'S REPORT

MR. KURTZ: No Report

11. MANAGER'S REPORT & UPDATES

MR. SCHOFIELD: Mr. Schofield presented the following report:

- The next Regular Council meeting was scheduled for Tuesday, March 13, 2012 at City Hall. Since the Municipal Election will be held on the same day and voting ends at 7:00 p.m., Council consensus at the Agenda Review was to change the meeting time to 7:30 p.m.
- Scott's Place will be closed from 7:00 am to 12:00 pm on Thursday, March 1st, 2012. Staff will be removing a piece of equipment that had been recalled.
- The Palms West Chamber of Commerce will be hosting a Candidate's Forum on Thursday, March 1st at 7:00 p.m. here in the Council Chambers at City Hall.
- Wellington's municipal election will be held on Tuesday, March 13, 2012 from 7:00 a.m. to 7:00 p.m. A listing of Wellington's precincts and polling locations can be found on Wellington's web site. Residents with questions about their voting precinct were asked to contact the Supervisor of Elections Office.
- There had been discussion at the Agenda Review about a request from the Palms West Chamber regarding a sponsorship for Wellington students at the Royal Palm Beach Arts and Music Festival. Mr. Schofield stated that a copy of their anticipated expenses was provided, and Ms. Bedford was also present to address this. He said that staff has been given the information showing where the money would go and that the \$5,000 was going specifically toward art supplies and facilities for Wellington students. Mr. Schofield requested Council direction on this issue.

Councilwoman Gerwig asked if there was no additional sponsorship required for the Wellington students.

Ms. Mary Lou Bedford said that they reached out to Council to sponsor this so that the students would not be required to go out and get a sponsorship. She said that of all the artists she ever had; only three had pursued a sponsor, but for the most part, students were not required to have a sponsor.

Councilwoman Gerwig asked if these supplies would be used by all of the participating students or only the Wellington students. In response, Ms. Bedford said that they would be used by all of the students noting that a majority of the students are from Wellington. She further stated that there are 100 student artists as well as some premier artist professionals who are also Wellington residents; however, for the most part they were only focusing on the students.

Mayor pro tem Priore asked if, for the street art project, the artists were limited to what they could engage in under the sponsorship. Ms. Bedford indicated that the artists were not limited explaining that they have a choice of either a 4x6 or 8 x 8 horizontal or vertical. Mayor pro tem Priore asked if that applied primarily to the street art or all types of art. Ms. Bedford said that the sponsorship was for street art. Mayor pro tem Priore questioned what would happen if they don't get 100 students. Ms. Bedford expected that she would have very close to the 100 students if not more.

Vice Mayor Willhite asked if Wellington's stage was included in this sponsorship, and if so, he wanted to ensure that Wellington's logos were not covered. Mr. Schofield explained that the stage was one of the things that Wellington normally provides to them, and there will be no question about the logos being covered. Ms. Bedford said that they had never covered the logos, and didn't know who did that. Mr. Schofield noted that the sponsorship specifically stated that Wellington's logo would be placed over all of the students' art so they know that Wellington is the sponsor.

Vice Mayor Willhite said that he wanted to continue supporting this since the stage was being used and Wellington was receiving recognition and that it benefitted Wellington's students in cultural activity.

Councilwoman Gerwig said that the information said that the Wellington student's artwork will have the Wellington logo. She said if Wellington was supplying supplies for everyone why wouldn't the Wellington logo be on all of the student artwork. Ms. Bedford said that they have always maintained a Wellington section, but they could do that if that was Council's desire although they will have other sponsors that have sponsored other areas.

Mayor pro tem Priore said that he recalled that last year each individual parcel had a small identification as to the sponsor, and asked if they would continue to do that. Ms. Bedford responded affirmatively.

Vice Mayor Willhite said that it was his preference that everyone not have a Wellington logo, but he wanted the ones from Wellington specifically identified.

Councilwoman Gerwig wanted to ensure that everyone that Wellington was sponsoring even it was students from Royal Palm Beach have the Wellington logo.

Councilman Coates said that in addition to this benefitting Wellington students, he said that he was supportive of this because it was fostering good neighbor relations with Royal Palm Beach who also come into Wellington and support their events. He said he also wanted to distinguish his support of this sponsorship from other concerns he raised about other sponsorships because here they were directly benefitting Wellington students.

Mayor Bowen concurred with Councilman Coates stating that he felt it was twofold: (1) it was benefitting Wellington students and (2) it was marking Wellington's branding to other areas. He said that he was in favor of all of these types of sponsorships.

Mayor pro tem Priore said that the Palms West Chamber is now a regional chamber and as such all of the associated communities would be asked for support. He said that Council was saying that when Wellington engages in that support, they wanted to ensure that recognition is given to the Village. He said that he also wanted to have the other communities during the Holiday parade acknowledge Wellington and Wellington would acknowledge their participation. Ms. Bedford said that the Chamber tries to do that, and asked that the Council advise them of any situation where that was not being done.

Councilwoman Gerwig asked if Royal Palm Beach provides cash sponsorship when they participate in Wellington's events noting that Wellington was bringing both in-kind and monetary support. Ms. Bedford said that to the best of her knowledge, Royal Palm Beach only participates in the events.

Council consensus was to approve the sponsorship.

12. COUNCIL REPORTS

COUNCILMAN COATES: No Report.

VICE MAYOR WILLHITE: Vice Mayor Willhite presented the following report:

- Vice Mayor Willhite said that he was very happy with the work at Tiger Shark Cove.

- He said that he was happy with the work and appearance of the C-2 Canal, and that he wished that all of the canals looked like that as he felt it was a very good model.
- Vice Mayor Willhite acknowledged the Green Market noting that he has received many good comments about it.
- With regard to the flag presentation that was given, he said that the Sons and Daughters of the American Revolution and their lineage are important to the Country. He pointed out that the Daughters of the American Revolution were present during the dedication of the Patriot Memorial. He said that he was very supportive of anything relating to the United States, the military and public service employees. Vice Mayor Willhite said that he didn't know if there was an original flag from the Village that they could put next to this.

Mayor pro tem Priore noted that when Wellington first incorporated, the Daughters of the American Revolution presented the Village with a flag.

Mayor Bowen stated that there was a person who had wanted to speak during the public forum, and he felt that they should hear from her before they completed the Council Reports.

PUBLIC FORUM

1. Carol Coleman. Ms. Coleman said that she did not hear Council when they discussed the Grand Prix Village Plat. She said that a plat is a development order that requires a public hearing and has to have all of the taxes paid. She asked if Wellington had that information.

Mr. Kurtz pointed out that a plat does not require a public hearing. He noted that a building permit is also a development order that doesn't require a public hearing. Mr. Kurtz explained that a plat must be approved by Council and the Grand Prix plat was approved as part of the Consent Agenda which is the typical manner that plats are approved in Wellington. With respect to the taxes, Mr. Kurtz said that he was not sure if the taxes had been paid, but explained that it is the recording of the plat that is separate from its approval. He further explained that in order to record the plat, improvements may have to be made to the property that are required pursuant to the plat or bond. In addition, at the time of recording which may be a certain time after the approval, the taxes have to be in order and there is a certification with respect to that.

COUNCIL REPORTS (continued)

COUNCILWOMAN GERWIG: Councilwoman Gerwig presented the following report:

- Councilwoman Gerwig wanted to ensure that the public was aware that they could pick up their pickets starting that day at Tiger Shark Cove; however, after March 5th, they would be moved to the Village Park Gym site. She noted that people could purchase another picket for \$20.00 made out of the more durable product. She said that sponsorships would be appreciated and also noted that tools for the work were needed. Councilwoman Gerwig said that participation from the community to rebuild the park was once again needed. She spoke of what a great experience it was to be involved in this project, and encouraged those children who had worked on the original park to come back and be involved now that they were older. Councilwoman Gerwig said that 16 and up could participate; however, 14 and up could volunteer if accompanied by a parent. Mr. Barnes announced that childcare would be provided noting that children can be dropped off at Village Park.

MAYOR PRO TEM PRIORE: Mayor pro tem Priore presented the following report:

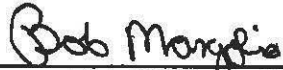
- Mayor pro tem Priore asked if the Polo Village II plat would be coming back before Council on the March 13th Agenda. Mr. Schofield said that it will be on that agenda assuming that they have supplied all of the documentation.

MAYOR BOWEN: No Report

13. ADJOURNMENT

There being no further business to come before Council, the meeting was adjourned at 7:50 p.m.

Approved by:



Bob Margolis, Mayor



Awilda Rodriguez, Clerk

MINUTES

REGULAR MEETING OF THE WELLINGTON COUNCIL Wellington City Hall 12300 Forest Hill Blvd. Wellington, Florida 33414

**Tuesday, May 22, 2012
7:00 p.m.**

Pursuant to the foregoing notice, a Regular Meeting of the Wellington Council was held on Tuesday, May 22, 2012 commencing at 7:00 p.m. at Wellington City Hall, 12300 Forest Hill Boulevard, Wellington, FL 33414.

Council Members present: Bob Margolis, Mayor, Howard K. Coates, Jr., Vice Mayor, Matt Willhite, Councilman, Anne Gerwig, Councilwoman, and John Greene, Councilman.

Advisors to the Council: Paul Schofield, Manager, Jeffrey S. Kurtz, Esq., Attorney, Awilda Rodriguez, Clerk, John Bonde, Deputy Manager, Francine Ramaglia, Assistant Manager, and Jim Barnes, Director of Operations,

1. **CALL TO ORDER** – Mayor Margolis called the meeting to order at 7:00 p.m.
2. **PLEDGE OF ALLEGIANCE** - Dr. Galen and family led the Pledge of Allegiance.
3. **INVOCATION** – Vice Mayor Coates delivered the Invocation.
4. **APPROVAL OF AGENDA**

Mr. Schofield presented the approval of the agenda noting the following changes: (1) postpone items 7A - Ordinance No. 2012-12 (Best Management Practices) and 7B - Ordinance No. 2012-09 (Congregate Living Facility); however motions would be needed at the time those items were heard; and (2) item 7C - Ordinance No. 2012-01 (Equestrian Village Comprehensive Plan Text Amendment) has been withdrawn. He noted that it had been timely removed, but not in enough time to remove it from the agenda.

A motion was made by Councilman Willhite, seconded by Councilwoman Gerwig, and unanimously passed (5) approving the Agenda as amended.

5. PRESENTATIONS AND PROCLAMATIONS

A. PERFORMANCE BY CARA YOUNG, GRAND PRIZE WINNER OF THE WELLINGTON IDOL COMPETITION

Mr. Schofield introduced Ms. Cara Young, grand prize winner of Wellington's Idol Competition. Ms. Young performed her winning song.

Council thanked Ms. Young for her performance and congratulated her on winning the competition.

6. CONSENT AGENDA

- A. RESOLUTION NO. R2012-32 (MORALES VACATION/ABANDONMENT): A RESOLUTION OF WELLINGTON, FLORIDA'S COUNCIL, VACATING THE ENTIRE 10 FOOT WIDE AND 12 FOOT WIDE UTILITY EASEMENTS LYING BETWEEN LOTS 5 AND 6, BLOCK 72 OF SADDLE TRAIL PARK OF WELLINGTON PUD (14484 BELMONT TRACE); AND PROVIDING AN EFFECTIVE DATE.**
- B. RESOLUTION NO. R2012-34 (MAINTENANCE MEMORANDUM OF AGREEMENT BETWEEN STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION AND THE VILLAGE OF WELLINGTON): A RESOLUTION OF WELLINGTON, FLORIDA'S COUNCIL APPROVING A MAINTENANCE MEMORANDUM OF AGREEMENT BETWEEN THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION AND THE VILLAGE OF WELLINGTON FOR INSTALLATION AND MAINTENANCE OF HARDSCAPE IMPROVEMENTS WITHIN THE RIGHT-OF-WAY OF STATE ROAD 7/US 441; AND PROVIDING AN EFFECTIVE DATE.**
- C. AUTHORIZATION TO UTILIZE STATE OF FLORIDA CONTRACT #450-000-11-ACS WITH W.W. GRAINGER, INC. AND GENERAL SERVICES ADMINISTRATION (GSA) CONTRACTS WITH THE HOME DEPOT (GS-06F-0052N) AND LOWE'S (GS-21F-0039X) AS A BASIS FOR PRICING TO ENTER INTO A CONTRACT FOR THE PURCHASE OF FACILITIES MAINTENANCE, REPAIRS AND OPERATIONS (MRO) SUPPLY AND EQUIPMENT**
- D. AUTHORIZATION TO AWARD A CONTRACT TO PROVIDE BUS RENTAL AND DRIVER SERVICES**
- E. AUTHORIZATION TO AWARD THE CONTRACT FOR CONSTRUCTION OF THE ENTRY WALLS LOCATED AT SOUTH SHORE BOULEVARD AND BIG BLUE TRACE TO ALL-SITE CONSTRUCTION, INC**
- F. AWARD OF THE CONTRACT FOR THE WASTEWATER TREATMENT PLANT ENTRANCE LANDSCAPING PROJECT TO LANDSCAPES OF DISTINCTION, INC**

Mr. Schofield presented the Consent Agenda for approval.

A motion was made by Councilwoman Gerwig, seconded by Vice Mayor Coates, and unanimously passed (5-0) approving the Consent Agenda as presented.

7. PUBLIC HEARINGS

- A. ORDINANCE NO. 2012-12 (BEST MANAGEMENT PRACTICES): AN ORDINANCE OF WELLINGTON, FLORIDA'S COUNCIL, AMENDING ARTICLE V, "STORMWATER QUALITY MANAGEMENT", OF CHAPTER 30 "ENVIRONMENT" OF WELLINGTON'S CODE OF ORDINANCE, TO PROVIDE ENHANCED STANDARDS FOR BEST MANAGEMENT PRACTICES FOR LIVESTOCK WASTE; PROVIDING DEFINITIONS, ENHANCING THE BEST MANAGEMENT PRACTICES PROGRAM FOR APPLICATION AND STORAGE OF FERTILIZER; PROVIDING FOR ENFORCEMENT; AND PROVIDING AN EFFECTIVE DATE.**

Mr. Schofield introduced the agenda item announcing that staff was requesting to postpone this to a time certain, June 12, 2012 and a motion was required.

A motion was made by Vice Mayor Coates, seconded by Councilman Willhite, and unanimously passed (5-0) to postpone Ordinance No. 2012-12 to the June 12, 2012 Wellington Regular Council meeting at 7:00 p.m. in the Council Chambers.

B. ORDINANCE NO. 2012-09 (CONGREGATE LIVING FACILITY ZONING TEXT AMENDMENT): AN ORDINANCE OF WELLINGTON, FLORIDA'S COUNCIL; PERTAINING TO ZONING; AMENDING ARTICLE 3, CHAPTER 2 DEFINITIONS TO INCLUDE DEFINITION FOR SENIOR HOUSING AND TO AMEND THE CONGREGATE LIVING FACILITY DEFINITION TO INCLUDE SENIOR HOUSING; AMENDING ARTICLE 6, CHAPTER 4, SECTION 6.4.4.30 CONGREGATE LIVING FACILITY; AMENDING SECTION 6.4.4.30 TO ALLOW A NEW CONGREGATE LIVING FACILITY TYPE 2 (B) CATEGORY FOR SENIOR HOUSING THAT PROVIDES RESIDENCE FOR MORE THAN SIX (6) BUT NO MORE THAN TWENTY-ONE (21) PERSONS 65 YEARS OF AGE OR OLDER WITH ADDITIONAL REGULATIONS; PROVIDING A CONFLICTS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

Mr. Schofield introduced the agenda item announcing that staff was requesting to postpone this to a time certain, July 10, 2012 and a motion was required.

A motion was made by Vice Mayor Coates, seconded by Councilman Greene, and unanimously passed (5-0) to postpone Ordinance No. 2012-09 to the July 10, 2012 Regular Wellington Council meeting at 7:00 p.m. in the Council Chambers.

~~C. ORDINANCE NO. 2012-01 (EQUESTRIAN VILLAGE COMPREHENSIVE PLAN TEXT AMENDMENT): AN ORDINANCE OF WELLINGTON, FLORIDA'S COUNCIL, APPROVING COMPREHENSIVE PLAN TEXT AMENDMENTS PETITION NUMBER 2011-033 CPTA ALSO KNOWN AS EQUESTRIAN VILLAGE COMPREHENSIVE PLAN TEXT AMENDMENTS TO AMEND LAND USE ELEMENT POLICY 1.3.7 THAT LIMITS BUILDING HEIGHT TO 35 FEET OR LESS IN ALL LAND USE CATEGORIES, TO ADD AN EXCEPTION FOR HOTELS WITHIN THE EQUESTRIAN PRESERVE AREA WITH A COMMERCIAL RECREATION LAND USE DESIGNATION IN A PLANNED DEVELOPMENT, AMEND POLICY 1.3.14 COMMERCIAL RECREATION IN THE EQUESTRIAN PRESERVE AREA TO INCREASE MAXIMUM ALLOWED BUILDING COVERAGE FROM 10% TO 15% AND INCREASE MAXIMUM ALLOWED FLOOR AREA RATIO (FAR) FROM .10 TO .15 AND IN THE EQUESTRIAN ELEMENT TO AMEND OBJECTIVE 1.1.C TO PROVIDE FOR HOTEL, RESTAURANTS, RETAIL AND OFFICES WITHIN THE EQUESTRIAN PRESERVE AREA WITH A COMMERCIAL RECREATION LAND USE IN A PLANNED DEVELOPMENT PROVIDED THE HOTEL HAS DIRECT ACCESS TO AND LOCATED AT A ROAD INTERSECTION WITH AN ARTERIAL ROAD; PROVIDING A CONFLICTS CLAUSE; PROVIDING A REPEALER CLAUSE; PROVIDING A SAVINGS CLAUSE AND PROVIDING AN EFFECTIVE DATE. WITHDRAWN~~

THIS ITEM HAD BEEN REMOVED FROM THE AGENDA.

D. EQUESTRIAN VILLAGE AMENDMENT TO WELLINGTON PUD MASTER PLAN

Mr. Schofield introduced the agenda item. He explained that this was a Section 5.9 Status Review. If acceptable, he requested that the planning staff make a brief presentation on why the status review

was being presented and what their options were. Mr. Schofield also noted that this was a public hearing. Mr. Kurtz added that this was a quasi-judicial proceeding and they needed to operate under Wellington's rules for such hearings. He announced that they would begin with the swearing in of witnesses who intended to speak to the matter followed by Council's disclosure of their ex-parte communications. Mr. Kurtz advised Council that there was a request for additional time by Mr. Shubin's clients, the Jacobs, who have requested at least 15 minutes as was noted in their letter. He said that the applicant was typically entitled to 20 minutes, but had requested additional time probably about 30 minutes. He advised Council that after witnesses were sworn in and they disclosed their ex-parte communications, they should determine the time allowed for the speakers prior to staff's report.

At this time, Mr. Kurtz administered the oath to all those people who indicated that they would be speaking on this item. He advised those people to identify that they had been sworn in prior to their speaking.

Ex-Parte Communications

Councilman Greene: Councilman Greene disclosed that he met with the applicant and his representatives, members of the Jacobs' family and their representatives as well as meetings with staff.

Councilman Willhite: Councilman Willhite disclosed that he met with staff, the applicant and his representatives, members of the Jacobs' family and their representatives, and prior to these proceedings; he met with every person who has an interest in this, was present or had attended any of the hearings as well as staff.

Mayor Margolis: Mayor Margolis disclosed that he met with staff, the applicant and his representatives, and the Jacobs' family and their representatives.

Vice Mayor Coates: Inclusive of the prior proceedings and this proceeding, Vice Mayor Coates disclosed that he met with the applicant and his representatives, staff and members of the Jacobs' family.

Councilwoman Gerwig: Councilwoman Gerwig disclosed that she met with staff, the applicant and anyone else who requested time with her.

Mr. Kurtz reiterated that there were requests for additional time. He noted that several letters had been received from Mr. Shubin's office that day and the previous day. He said that most of what was included in the letters were in the nature of arguments, and he assumed they would be presenting that at the meeting. In accordance with Wellington's quasi-judicial procedure, copies of documents that are requested to be put in the file should have been received by the Clerk four days prior to the proceeding. Mr. Kurtz pointed out that Wellington's rules say that documentary evidence or written argument not given timely to the Village Clerk may not be considered by the Village Council.

Councilman Willhite questioned if that was specific to quasi-judicial hearings noting that Council has taken documents and evidence on the dais as part of the record at proceedings in the past. Mr. Kurtz said that evidence was able to be introduced at the proceedings; however, for these items coming into the record at this point in time, Council would have to consider if they were willing to accept it.

Councilwoman Gerwig referred to the correspondence that was received that day from Shubin & Bass. She said that it indicated that Council could not hear this situation because it is involved in litigation, and asked Mr. Kurtz for his legal opinion on that. Mr. Kurtz said that he believed the letter

they were speaking to address the plat issue. He explained that there was litigation surrounding these various issues; however, this particular issue was not presently the subject of litigation, but it pertained to whether or not the applicant complied with the conditions that were imposed upon them through the resolution. He further explained that they were not yet hearing the plat, but with respect to item 7D which has to do with the status report on the master plan amendment and the conditions associated with it, he believed they could hear it. He indicated that he would address the plat if and when they got to that point.

Vice Mayor Coates asked what the deadline was when the public was supposed to submit information to the Village for evidence for this meeting. In response, Mr. Kurtz said that it had to be submitted four days prior to the hearing. Vice Mayor Coates said that he was inclined to allow it all; however, he had some concerns whether the applicant was able to review the material and that they may be prejudiced from the standpoint that they did not have an opportunity to have adequate time to respond to the new evidence. He asked Mr. Kurtz if he had any concerns about that. Mr. Kurtz said that was one of the reasons for the rule, but the applicant could speak to that issue. He noted that the Village Clerk's office did send the materials to the applicant probably between 4:00 p.m. and 5:00 p.m. that day by the time they were e-mailed over.

Councilman Willhite pointed out that the one letter only objected to Council's hearing an item.

Mr. Kurtz said that there was a May 22, 2012 letter concerning the Polo Village Plat that dealt with their argument that they should not hear the plat if they get to it. There is also a May 21st letter that related to the Equestrian Village Compatibility Determination that is agenda item 7E which was the next item on the Agenda. He noted that a letter had been received that day concerning the Equestrian Village PUD modification for Village item 7D which was this particular item.

Vice Mayor Coates stated that he had reviewed the May 21st letter relating to 7E, but had only seen the May 22nd letter which addressed 7D; and he did not have a chance to review it. Mr. Kurtz stated that he suspected it memorialized their argument. Vice Mayor Coates said that his real concern was whether the applicant was going to claim that it was prejudiced by the late submission of this information.

Mr. Dan Rosenbaum, representing the applicant on both items on the Agenda, stated that the only correspondence that he received was the May 21st letter from Mr. Shubin's office although he had only received it late that afternoon. He noted that he had been in depositions and was tied up with different matters. He said that on his way over to the meeting, e-mails were trying to be sent to his Blackberry which he couldn't retrieve. Mr. Rosenbaum said that he did not have a chance to review anything other than the e-mail that was sent to him by Mr. Kurtz' office which was the May 21st letter. He also noted that the May 21st letter was not copied to them. Mr. Rosenbaum further stated that they would object to giving any consideration to the submissions that they had not seen. He said that the Jacobs family, through Mr. Shubin's law office, participated in the two resolutions that they were going to speak to that night as an interested party because they had asked for that consideration and it was given to them. He said that involved the potential issuance of development orders; however, the issue at this meeting was slightly different. Mr. Rosenbaum explained that the issue in this case was whether or not there had been a violation of a condition of the development order. He said that as a result of that, it was the applicant's position that they were not entitled to be a party or an interested party on both items any more than any member of the public. He said if this had been a code enforcement proceeding, they would not have a right to participate any further because it did not involve the issuance of a development order, but rather whether there was a violation of a condition which is another proceeding.

Mr. John Shubin identified himself as a member of Shubin & Bass, along with Amy Huber, on behalf of Charles and Kimberly Jacobs and Solar Sports Systems Inc. With respect to the May 22, 2012 correspondence regarding the plat, he said that there was a cover letter and an attachment dated March 12, 2012. He said that the cover letter only stated that they were reiterating the position that they set forth on March 12, 2012 and had attached it. He said that any suggestion that they were reintroducing new arguments or that there would be any surprises, was not the case. With respect to the other May 22, 2012 letter, Mr. Shubin said that they were only reiterating arguments that they presented to the Council on February 1, 2012. He said that they will accept the Council's decision, but intend on introducing this into whatever proceeding they are allowed to participate and make arguments derived from these documents. Mr. Shubin restated that the documents just reiterated the arguments that were made a long time ago noting that Mr. Rosenbaum, Mr. Bellissimo, and Mr. Kurtz were present when they were made and they didn't think there was any prejudice whatsoever.

Vice Mayor Coates asked Mr. Shubin if he was referring to the May 22, 2012 letter that dealt with item 7D. Mr. Shubin responded affirmatively stating that was a reiteration of their arguments presented at the February 1st hearing. The May 21, 2012 letter, although it was lengthy was also a reiteration with one exception which he said they would get to as part of their presentation which is a reiteration of arguments they made on February 2, 2012. He did not feel there was any prejudice established by this. Mr. Shubin further stated that with respect to their participation as an interested party, they established their standing at the proceeding when the resolution was approved, and that no one had challenged their standing to date. He said that this is an item that affects the same resolution, and felt that they should be given some status to be able to participate, but that was up to the courts to decide as to the extent of that participation. Mr. Shubin said that he could compress his case to 10 to 15 minutes.

Vice Mayor Coates agreed that for the most part, the May 22nd letter rehashed the arguments made in July, but asked if the ethics violation had been made noting that the letter stated that the data finding by the Commission on Ethics was March 1, 2012. Mr. Shubin said that was the exception that he had referred to because that wasn't revealed to anyone as it had only recently brought to everyone's attention by the Ethics Commission.

Mr. Rosebaum said that they were present on the notices that were issued by staff and the notices dated April 30 for the 2007 number and the May 2nd on the 2008 number which specifically delineated what the alleged violation was. He said that there was no place for a reiteration of arguments that had to do with the determination of the issuance of the development order. He said that those matters were now in litigation as pointed out by Mr. Shubin. He said that having been in litigation, they are decided by the parties that were here, the Village, the applicant, and in fact between the Jacobs family. He said that there really was no place to reiterate those arguments because they weren't here on those arguments because they were matters that were decided and were behind them. The Doctrine of Administrative Res Judicata applied and those matters were settled. In addition, unless there was a showing of changed circumstances where there have not been at this point, those arguments were irrelevant to what they were here on. He submitted that those matters were appropriate for tonight's proceeding.

Vice Mayor Coates said that he had asked at the Agenda Review, what was the scope that Council was being asked or required to consider. He asked if they were opening up everything that was decided in January or were they limited to the specific items that precipitated this hearing that being the failure to meet a certain condition. Mr. Kurtz said that staff has identified in their report that there was a failure to comply with one of the conditions specifically the timeliness of recording a plat on the property. With regard to Mr. Shubin's participation on behalf of the Jacobs, he noted that these proceedings were under the quasi-judicial rules which stated that any person or representative who

wishes to conduct cross examination or participate in an extended basis, only has to identify that desire to the Village Council and they are given 15 minutes. He said that they do not at this time determine the standing of the parties with respect to the order; it is simply an interested party. Mr. Kurtz further pointed out that they are clearly an interested party who could participate in this quasi-judicial proceeding. Mr. Kurtz read into the record item 5.9.3b3. "In reviewing applications for administrative time extensions for requirements other than conditions of approval, the Executive Director or designee shall approve a time extension if the order is consistent with the Village's Comprehensive Plan, consistent with the Land Development Regulations and complies with the County Performance Standards. He said that those are the basic factors that staff would have to consider. Similarly, that can be considered by this Council in determining whether or not there is a reason to grant the extension of time versus revoking the master plan approval. Mr. Kurtz said that Council has an argument as to whether or not those conditions have been altered. The staff's position, as stated in the status report, was because there had been no amendment to the Comprehensive Plan, no amendment to the Land Development Regulations and no amendment to the currency standards in the last two and half months, the recommendation was to grant the extension with certain condition. He said that was for Council to decide pointing out that they will hear arguments on that. He said that he did not believe they had to make that decision on a preliminary basis. Mr. Kurtz believed that Council should go forward with the proceeding.

Vice Mayor Coates asked if Mr. Kurtz' opinion was that Council should go forward with the proceeding with both sides making a presentation. Mr. Kurtz responded affirmatively.

Councilman Willhite said that he had asked Mr. Kurtz if Council was allowed to accept information at the dais noting that he believed that late last year, Mr. Rosenbaum had handed him a folder of documentation/information on this dais to discuss, review and to vote on the night of the proceedings. He said that he had no problem accepting into the record a letter that was dated the day of the hearing that only reiterated a position of March 12th nor did he have a problem accepting it if it were part of the presentation. He said that under Mr. Kurtz' guidance and direction, he was inclined to allow ample time that was previously requested at these proceedings. He thought that they had made equal time for the attorneys when they made their presentations. Mr. Kurtz noted that typically they equalize the applicant's time.

Mr. Kurtz pointed out that Mr. Shubin had only requested 15 minutes. Mr. Shubin noted that was as long as it was clear that in the event that they needed to engage in cross examination, it wouldn't count against those 15 minutes. Mr. Kurtz noted that the cross examination does not count against that time for either side.

Councilman Willhite said that he would allow the 15 minutes for each side with the cross examination not counting into that time. Mr. Kurtz pointed out that Mr. Rosenbaum had requested 30 minutes. Councilman Willhite said that he would allow Mr. Rosenbaum the 30 minutes and that cross examination does not count into that time.

Councilwoman Gerwig questioned whether there were any other interested parties. Mr. Kurtz said that Mr. Shubin was the only interested party who had requested time. He said that anyone else who may be interested is only give three minutes pursuant to Wellington's rules.

The consensus of Council was to allow the applicant 30 minutes as requested; the interested party (Mr. Shubin) 15 minutes as requested with the caveat that any cross examination time would not cut into their allotted time.

Mr. Basehart asked Council if they wanted to combine the hearings or vote on them separately. Both Mr. Schofield and Mr. Kurtz recommended that the hearings should be conducted separately.

Mr. Basehart presented the status report. He explained that this was the consideration of the status report for the Equestrian Village Master Plan Amendment to the Wellington PUD Master Plan. He stated that this was a Section 5.9 review explaining that Section 5.9 of the Land Development Regulations provides a process for a mandatory review of projects that either violate the imposed condition of approval or violates the code requirements, or do not comply with time certain conditions of approval for implementation. Mr. Basehart pointed out that the reason for the hearing was because there were seven conditions of approval attached to the master plan approval in February of this year. He explained that for the master plan amendment: (1) requested to allow some additional access points to the parcel and although they were physically there, they were not shown on the master plan, and (2) requested to redesignate the land use for the parcel which was originally, and at the time of the application, designated as a tennis and polo facility. He further stated that the change was for the western portion of the property to be designated as a commercial equestrian facility consistent with the current Comprehensive Plan designation in the eastern portion of the property to be designated as a polo facility. Mr. Basehart reiterated that approval was granted with seven conditions of approval noting that condition #7 required that by April 1, 2012 a plat was to be recorded for the property; however, that deadline was not met. Consequently, staff notified the owner of their non-compliance with that condition of approval and put him on notice that they were bringing the matter to Council for consideration on this date. In addition, a notice was recorded to prohibit the issuance of any new permits or development approvals on the property until this matter was resolved. Mr. Basehart explained that under Section 5.9, there were four options Council could take after hearing the testimony. The first option would be for Council to grant a time extension to record the plat. He noted that the technical issues related to the ability to plat the property had been resolved, and that matter was included in the meeting agenda. Mr. Basehart said that originally the staff report recommended a 90-day extension deadline or effectively until September 1, 2012. He said that under the circumstances, if the extension was granted, it wouldn't be necessary to grant it that long probably July 1st or so would be sufficient. Mr. Basehart said that the evaluation was done based on the nine criteria in the Code to consider these types of matters which had been included in the staff report. He said that at the Agenda Review, the review was done on the basis that the sitting Council in February made findings and found that the application was compliant with the Comprehensive Plan, with the standards in the Land Development Requirements, with concurrency and a number of other matters. He said that given the fact that only several months had passed since that time, the conclusion was that it was known that there were no changes to the Comprehensive Plan or the Land Development Regulations or the concurrency standards and there was no change to the nature or character of the area since the original approval of grants, and therefore, staff felt that the standards had been met and that an extension would be warranted. Mr. Basehart said that he could address questions and suggested having the applicant speak to justify their extension.

Vice Mayor Coates referred to the Doctrine of Administrative Res Judicata that was mentioned by the applicant's Counsel and asked how that affected staff's ability to address findings that were made by the previous Council. In response, Mr. Kurtz said that it would depend if there was a change in circumstance for staff to make an alternative determination. He said if there was a code change, or a change in the circumstance surrounding the property, there may be the ability to come to a different conclusion. Mr. Kurtz said that given the short duration of time, that there was no amendment to the Land Development Regulations or to the Comprehensive Plan, he didn't believe that staff could have come to another conclusion with respect to their report.

Vice Mayor Coates asked if it was accurate to say that this Doctrine of Administrative Res Judicata does apply here. Mr. Kurtz said that he would have to see the cases that the applicant was relying on

as he did not have the case law before him and wasn't prepared to make that determination until the cases were supplied. Vice Mayor Coates asked Mr. Kurtz if it was his view that if staff concluded that there has been no change in circumstances, that they are obligated to honor the previous rulings or decisions by Council. Mr. Kurtz said that staff originally made recommendations with respect to this project that it met those conditions when it was heard in February. He said that there has been nothing that has changed from the Land Development Regulations standpoint or any new information provided that would alter their recommendations. Mr. Kurtz felt that it was incumbent on them to be consistent with the matter. He said that the entire record from those proceeds had been included in Council's backup information. He further stated that Council has had a short opportunity to review those materials, but there was considerable argument at that time as to whether or not those standards had been met. Mr. Kurtz said that the Council made the determination that they had been met and were apparently in litigation with respect to those issues. He believed that staff made the recommendation that they made the first time and were making it again the second time in a consistent fashion.

Vice Mayor Coates asked how staff had previously handled a situation like this where there has been a failure to comply such as the failure to timely record a Plat. In response, Mr. Basehart said that he didn't recall that any circumstances of that nature had occurred since he has been on staff. He said that over the years there had been a couple of those circumstances which were brought to Council for a determination.

Vice Mayor Coates asked staff's opinion if there would be any prejudice to the Village by granting an extension to file the plat in this matter or what would the harm be in granting a short extension. Mr. Basehart said that staff saw no harm in granting such an extension.

With respect to item 7D, Vice Mayor Coates said that all they were discussing was the approval of a master plan that approved the access points to this property. Mr. Basehart said that was correct. Vice Mayor Coates said that it also included the designation of tennis to commercial equestrian and polo. Mr. Basehart responded affirmatively.

Councilman Greene said that they had raised the issue at the Agenda Review whether they were dealing with this issue or were they going back to the beginning and opening this up. He said that Mr. Kurtz had indicated that there had to be some type of non-compliance to constitute a change in circumstance, and questioned what would constitute a change in circumstances to re-open the issue. Mr. Kurtz explained that it constituted a failure on the applicant's part to comply with the condition, but it didn't constitute a change in circumstance with respect to the Land Development Regulations or the Comprehensive Plan or the currency issues.

Councilman Greene noted that he was not on Council at the time this was first voted on, but he sat in the audience and remembered that Vice Mayor Coates' concern was that these access points would be access points to something at some time. He said that the reality was that they know that there was something that is planned to go in there and they really were not just looking at access points even though that was what they were being told. He said that although they were just looking at this as only as access points, he believed that they are access points to something that will be greater than an entry into a parcel of land. Mr. Kurtz suggested that Council hear from the applicant on the issue. He said that they may not be admitting that they are in violation of the condition which is the first determination that would have to be made by Council.

Councilwoman Gerwig asked how often the Village requires a time-certain plat recording with this type of approval. She asked if that was a standard condition. Mr. Basehart said that Wellington's Code requires that all land in a planned development has to be platted. Councilwoman Gerwig asked what

the time period was for recording a plat. Mr. Basehart explained that in a large project it is phases which can be over many years. Councilwoman Gerwig asked if it would generally be a two-year platting requirement. Mr. Basehart said that the first plat in a planned development has to be filed within one year and then there are two-year intervals between each successive plat that is required. In this case, he said that his understanding of why that condition was placed with such a short timeframe was because the property was actually part of an illegal subdivision. He said that the land had been split not by the current owners, but by the previous owners without going through the platting process. Mr. Basehart said that staff recommended a condition that required a very short period of time to correct that situation.

Mayor Margolis said that the reason why they were here and why staff brought this 5.9 hearing forward was because of the applicant's failure to plat in a timely manner as one of its conditions. Mr. Basehart said that was correct.

At this time Dan Rosenbaum announced that he, Tatiana Yaques and Elizabeth Hertz, Rosenbaum Mollengarden, attorneys for the applicant were present. Mr. Rosenbaum provided Mr. Kurtz with the cases that he had previously mentioned. With respect to the subject matter of the issue that night, Mr. Rosenbaum said that the applicant does not believe that there has been a violation of the condition. He explained that the platting requirement for this particular case was imposed through an amendment to the development order so it was not part of the original development order which was done in February 2012. He further explained that the platting requirement went through April 1st so there was a short window to accomplish this. He said that he introduced into evidence, which he had previously sent to the Clerk, were the submittals include the Minutes of the meeting of February 28, 2012 where there was some dialogue that occurred on this issue as well as the actual tape from the February 28th meeting, agenda items for R2012-18 Polo Village II Plat, the March 13, 2012 Village Council Agenda, March 27, 2012 Village Council Agenda and staff reports/notifications of April 30, 2012, May 2, 2012 Article 8 Platting of Wellington, Florida under the Unified Land Development Land Regulations and Article 5 Section 9 Time Limitations of the Wellington, Florida Unified Land Development Regulations, and May 22, 2012 Village Council Agenda. These items were made part of the record for the hearing.

Mr. Rosenbaum stated that because there was an unusual set of circumstances which resulted from both the election and also the manner in which this was handled, they did not believe that there was a violation. He said that this began on February 1, 2012 when the Village Council passed resolution R2012-07 which was their master plan amendment which included a condition to record the proposed plat prior to April 1, 2012. At the Village Council meeting of February 12, 2012, there was some dialogue where the Village Attorney proposed that a resolution approving the plat be passed by the Council because there were only two very minor issues relating to it. He explained that the first issue had to do with Mr. Kurtz' review and approval of the Property Owner Association (POA) documents which he had, but had not yet had the opportunity to determine the legal sufficiency, and the second dealt with a minor proposed title issue concerning the C. Oliver Wellington encumbrance on the plat. Mr. Rosenbaum then read part of the Minutes from that meeting where Mr. Kurtz had indicated that the POA documents wouldn't be complicated to review and that he didn't anticipate any problems. With respect to the title issue, Mr. Kurtz had indicated that only a small amount of title work had to be supplied to him which would result in the removal of the C. Oliver Wellington encumbrance from the plat. Mr. Rosenbaum further stated that Mr. Kurtz had indicated that he had advised Council that he was comfortable reviewing those items with Council imposing a condition on the final plat and recording of it dependent upon those items being satisfactory. He explained that since this was on the heels of a very hotly contested election, Vice Mayor Coates (at that time Councilman Coates) had stated that since these matters hadn't yet been cleared up, he proposed a motion which was seconded and passed by the Council to table handling this in order to avoid the appearance that this

was being pushed through. Mr. Rosenbaum pointed out that even through Mr. Kurtz had indicated at that meeting that approximately 25% to 30% of the time plats that had some outstanding issues were passed by Council with conditions; Council decided to table the issue and have it brought back on the March 13, 2012 agenda so that all of the issues could be resolved. He said that the preliminary plat turned out to be the plat that was submitted with one exception which was compliant. Mr. Rosenbaum said that there was no question about the plat having been reviewed and being compliant and the only issue was the POA documents. He then read from the Minutes where Mr. Kurtz had indicated that the attorney who was doing the title work had indicated that it wasn't an encumbrance on the property and it should not be reflected on the plat and that they would be sending Wellington confirmation of that which had occurred and the matter was resolved. Mr. Rosebaum further stated that Councilman Willhite felt that the Council was being asked to approve something that Mr. Kurtz had not yet approved; however, Mr. Kurtz stated that he had been supplied with the POA documents to review, but there was still the question about the title. He further noted that Councilman Willhite had asked Mr. Kurtz if he had any concern about Council approving the plat. Mr. Kurtz had indicated that the POA documents shouldn't be very complex and he didn't anticipate any problems. With respect to the title work, Mr. Kurtz had indicated that it was only a matter of the title work being supplied to him which would result in the removal of C. Oliver Wellington from the plat. Still reading from the Minutes, Mr. Rosenbaum said that Mr. Kurtz had indicated that he was comfortable reviewing those items and Council conditioning the approval and recording of the plat on those items being satisfactory, and if they were not, it would be brought back to Council. Mr. Rosenbaum further stated that Mr. Kurtz had stated in those Minutes that the staff had reviewed the plat and believed that it complied with the master plan requirements. In the Minutes, Mr. Rosenbaum said that Mr. Kurtz was explaining the dedications and what had to occur, and had indicated that for everyone the approval of a plat is a ministerial function and whether or not it meets the requirements of the Code. Mr. Rosenbaum said that Mayor Bowen questioned when the POA documents and the clarity on the title were expected and if it was expected to be only a short period of time that it is postponed to the next Council meeting. Mr. Kurtz stated that the time was such that it would only be a matter of days noting that it had been put on the agenda with the anticipation that it could have been clarified prior to the Council meeting. Mr. Rosenbaum then read a portion of Vice Mayor Coates' comments which stated that he didn't want Council to be used as a political instrument in light of the present climate nor did he want anyone accused of advancing this on a faster track than it ordinarily took.

Mr. Rosenbaum explained that it was what he believed had occurred between those two dates that caused the complexities of the matter. He said that the issue in terms of the timeline and what occurred is that there was an issue that arose involving some litigation specifically with the de-annexation. He said that Mr. Kurtz had to spend time on that issue which resulted in his not concluding his review of the POA documents in time to have the item placed on the agenda for the March 13th meeting. He further stated that at a meeting on March 6, 2012 attended by his associate, Ms. Yaques with Mr. Kurtz, they discussed the title issue regarding the de-annexation lawsuit filed by the Jacobs. Mr. Rosenbaum said Ms. Yaques was told that it would take Mr. Kurtz more time to review the title documents and that the approval of the plat could not be placed on the March 13, 2012 Council Agenda. Mr. Rosenbaum said that what was anticipated to have been resolved in a short time was not done. He then pointed out that in order to fulfill the Council's motion; the Village has a role that they handle before the process can move forward. Because of something that had sidetracked the process at that time and because the window for the agenda was only seven days, Mr. Kurtz was not able to finish a project that he anticipated would take only a matter of days. He further stated that the title matter had been resolved, the plat had been approved, but the problem was that the POA documents had not been reviewed by Mr. Kurtz. Mr. Rosenbaum noted that took it from the March 13th meeting where Council anticipated it to be. He said coupled with that was the election issues which he didn't believe anyone would argue had consumed the Council and Village during this time period. He said that on March 19th, the election problems were discovered and the

Village became consumed with the issue. On March 27th, it was extremely difficult to reach Mr. Kurtz because he was consumed with the election matters. Mr. Rosenbaum noted that he did reach Mr. Kurtz to discuss the plat approval deadline and the plat not being placed on the agenda. He said that he asked Mr. Kurtz what they were going to do about that to which he responded that they would give them an extension considering all that was going on and there was no way they were going to get that done within the time period. Mr. Rosenbaum said that because of the situation, the April 1st time period did not get done. He also stated that there was a lack of notification to the applicant until the April 30 notification about this meeting that was received on May 7th and that the POA documents had been approved in the exact format that they had been given to the Village. He didn't believe this was a situation where the applicant purposely violated the situation or tried to skirt a condition, but the process due to an unexpected event took what was anticipated to be a very simple matter to go past the April 1st date. Mr. Rosenbaum said that subsequently the plat was submitted and was improved because of a purchase of property which eliminated the need for a potential variance, and was ready to be recorded. He said that looking at the factors in the staff report, the question in their analysis is what has changed, and they found that the original development order remained consistent with the Village's Comprehensive Plan although he said that Mr. Shubin disagreed with that. Mr. Rosenbaum said that was the finding of the Village Council in passing that resolution, and the law is the remedy that the interested party has elected to follow and their lawsuit will be adjudicated. He said that since there has been no change that remains Administratively Collateral Estopped Res Judicata. He said that it is not opened to re-debate, but is settled between the parties. With respect to the original development order, it remains consistent with the Land Development Regulations with no changes. He said that they were looking at a window of less than 60 days. He said that the question was what really has changed noting that much of this time had to do with matters dealing with the election. Mr. Rosenbaum reiterated that there were no changes to the LDRs since the approval on February 1 and it remained consistent noting that is the subject of Administrative Res Judicata and Collateral Estoppel. He noted that the original development order also remains compliant with the County-wide traffic performance standards, and the approval granted on February 1, 2012 remains consistent. He then addressed the attempts by the applicant to complete the unfilled condition.

At this time, Mr. Rosenbaum called upon his associate Tatiana Yaques to testify. Ms. Yaques stated her name and address, 1716 Shoreside Circle, Wellington. In response to a question regarding her employment, Ms. Yaques stated that she worked for Rosenbaum Mollengarden and that she was an attorney-at-law licensed in the State of Florida, that she practiced law eight years, and did her undergraduate study at Cornell University and went to Northwestern Law School. Mr. Rosenbaum then asked Ms. Yaques if she had met with the Village's attorney, Mr. Kurtz on March 6, 2012 and if so, what the purpose of the meeting was, and was he present at the meeting. Ms. Yaques responded affirmatively explaining that she had met with Mr. Kurtz to discuss some of the title issues that had been raised by a de-annexation lawsuit filed by the Jacobs family and indicated that Mr. Rosenbaum was present for only part of the meeting. He then asked if there was a point in the meeting where he left. Ms. Yaques responded affirmatively. Mr. Rosenbaum asked if she had a discussion with Mr. Kurtz after he left the meeting concerning the review of the title documents and the approval of the plat as it related to the March 13, 2012 Village Council agenda. Ms. Yaques responded affirmatively explaining that Mr. Kurtz had expressed to her that due to the complexity of the nature of the title issues that were raised by the de-annexation lawsuit, more time was required for him to review them and that the plat could not be placed on the March 13, 2012 agenda. Mr. Rosenbaum asked Ms. Yaques if she relayed that information to him which she responded that she had.

With regard to the attempts by the applicant to complete the unfulfilled condition, Mr. Rosenbaum said that everything had been done noting that the site plan had gone back to the Development Review Committee, and that this was an unusually short window. He said that he didn't believe it was an attempt on anyone on Council at the time to make this a situation where the applicant couldn't comply.

He said that typically plats are six months, one year or sometimes two years. Due to this unusually short window and these extraordinary short circumstances and the fact that the process itself requires a partnership between the Village and the applicant, the applicant couldn't move forward in the process if there was a problem which he believed occurred in this case. Mr. Rosenbaum said if the item didn't get placed on the March 13th agenda because the POA documents could not be reviewed for technical compliance because the Village's attorney had other matters to attend, then that placed the applicant on hold. Mr. Rosenbaum said that no one alleged and no one would find evidence of anything other than a good faith effort by the applicant to get this done, and no one at any time had any intent to harm the Village. He further stated that to the contrary the intent was to make things better and to get a better plat which they had done. He said that while this matter was brought to Council for their consideration, they have to ask how anyone has been harmed. Mr. Rosenbaum said given what had occurred in this unusual window of time, he questioned if it made sense to punish the applicant for something that he could not control or was it more fair and equitable to allow the short extension to have the plat recorded. He respectfully submitted that there was only one reasonable conclusion that this situation which was unanticipated and was not the fault of anyone, was a matter of circumstance and was worthy of being excused because there was no prejudice, no attempt to willfully violate an order or harm the Village. Mr. Rosenbaum said that although the factors involved the reliance on other parties and the timely performance of the activity, that the plat itself was really for the Village and applicant and there were no third parties who were reliant on it, and the only parties involved were not hurt, the actions by other parties that may have precluded compliance have been addressed, the existence of extraordinary mitigating factors have been addressed, and with the condition compliance in subsection 11.4.3e that has no application that staff has correctly found. Mr. Rosenbaum concluded stating that this was a de minimis situation and was not a major violation of a condition for development order approval, the circumstances were self-evident and he didn't see any harm to any party caused by these circumstances. As a result, they requested that the Council approve the plating extension because the original intent was to have this property platted, and allow the illegal subdivision that pre-existed the applicant's ownership of the property to be cured which is in the benefit of all of the residents of the Village and the enforcement of these types of development orders.

At this point, Mr. John Shubin, Shubin and Bass, addressed the Council stating that he and Amy Huber were present on behalf of Charles and Kimberly Jacobs, owners of real property located at 2730 Polo Island Drive A104 and Solar Sports Systems Inc., the owner of real property located at 13307 Polo Club Road, Unit C104 and C105. He stated that he wanted to incorporate into the record, the record of all of the proceedings from January 31, 2012 to February 22, 2012 regarding the underlying approvals which were the subject of this proceeding. He also requested that Council accept into evidence the two pieces of correspondence dated May 22, 2012 and May 21, 2012 which had previously been discussed. He said that he listened to Mr. Rosenbaum's presentation and he said that he was hearing arguments for the first time yet Mr. Rosenbaum had complained about the prejudice of submitted arguments that had previously been made. He said that he wanted to provide some context since Mr. Rosenbaum had focused on the propriety of whether or not he properly or did not properly comply with the underlying resolution. Mr. Rosenbaum said that when they had made their presentation to a previous iteration of the Council, one of the arguments that they repeatedly made was their inability to appreciate and understand how the Village had permitted going back to December 11, 2011 permanent structures on the site without there being a plat of record. He said that when Mr. Rosenbaum had discussed at the end of his presentation about this being a pre-existing subdivision, he thought that Mr. Schofield used the term that there was an illegal sub-division that had been pre-existing and that in some respects served as the basis by which the applicant could seek permits for development approvals and could actually move forward with permanent construction in the absence of a plat. He said that was one of the issues around the December, January and February timeframe leading up to the hearings that were the subject of this proceeding. Mr. Shubin

explained that orders were entered, resolutions were entered and there was a condition that was very clear. He said that they had spent a lot of time arguing about interpretation of different code provisions; however, he did not believe that anyone could say that this condition wasn't perfectly clear. He further stated that Mr. Rosenbaum had raised Collateral Estoppel; however, if he thought that condition as it applied on the resolution that the plat had to be recorded by April 1st was unreasonable, too short of a deadline under all of the circumstances, he could have made an argument to the Council stating that the condition was too difficult for him to comply with or he could have appealed that order just as he had done. Mr. Shubin said that Mr. Rosenbaum could have said that he was appealing this order because he believed that it included a condition that had no basis, it was onerous and it essentially restricted his ability to properly develop the property. However, they thanked the Council, accepted the resolution with all of the conditions and no evidence had been submitted. He pointed out that there was no compliance with that condition, and most importantly, Mr. Rosenbaum's client never sought an extension of time in writing from the Council prior to the April 1st deadline, and there was no evidence of that having occurred. He then explained that the Doctrine of Administrative Res Judicata decision is made and decision is final and adjudicated by Court particularly in zoning, it is deemed to be prejudicial. He said that when they are not in a court of law, but before an administrative body, it is this body that makes the determination whether or not there is a sufficient change in circumstances so as to justify receding away from the Doctrine of Administrative Res Judicata. He said that was Council's decision, and they couldn't do it based on a whim or illogic. Mr. Shubin pointed out what was not in dispute. He noted that there was a fundamental failure to comply with a material condition in the resolution, and that anyone who wanted to suggest that wasn't a change in circumstances was making an illogical argument that Council was not obligated to accept. In addition, he wanted everyone to consider that there was a subsequent event that had occurred referring to a public report of finding of probable cause by the Palm Beach County Commission on Ethics which he submitted into the record. He explained this was something that occurred after the January and February resolutions. Mr. Shubin further explained that this was a finding, dated March 1, 2012 which specifically found an ethics violation in connection with Dr. Scott Swerdlin's participation as part of the Equestrian Preserve Committee in the companion applications that appeared before the Equestrian Preserve Committee. He believed that this was clearly another factor, and that they will continue to argue that to the extent that these allegations have been established and have not been rebutted, anyone is collaterally estopped from arguing that they don't have legal impact. He further stated that when Mr. Rosenbaum addressed the precedential value and legal impact, there is the failure to comply with the resolution and a public report and finding of probable cause. Mr. Shubin maintained that this finding affects the entire proceeding that occurred between January 31, 2012 and February 2, 2012.

Mr. Shubin further stated that it was important to outline their position based on several key points. He stated that he had listened to the Council's discussion at the Agenda Review and thought it was important to emphasize what he believed to be some important points related to his client's position. Firstly, he said that his client was not responsible for the hearing being held at this time in any way. The only reason they were here was to reassert the position that they had already asserted before the Council and in court and to incorporate some new evidence and bring that to their attention. He stressed that they did not bring this issue to the Village's attention, they did not write a letter that dealt with a missed a deadline, it was not their responsibility and they did not demand this hearing. Mr. Shubin noted that this meeting was being held because Wellington has a specific provision in the Code that mandates that they go through this procedure. He further noted that his clients did not impose the deadline in the resolution nor did they suggest them, but they came solely from Wellington's professional staff. Mr. Shubin stressed that the actions of his clients had nothing to do with the developer missing his deadline as the record was clear that the developer was solely responsible for his failure to comply. He reiterated that his client had no impact on this and the Village had no impact on the developer's failure to comply or to apply for a timely extension. Mr. Shubin

stated that they have asked Council to rescind both of the resolutions including the one before them. He said that he wanted to clarify that if Council took that action it did not rescind any of the developer's permits and it would not eliminate dressage in Wellington. He pointed out that the developer had historically relied on Special Use Permits to hold the event and he was entitled to seek and to continue to seek these permits regardless of Council's ruling at this time. Mr. Shubin said that he made his clients' position clear in mediation. Without violating the confines of mediation, he stated that his clients would support dressage as long as its operation was compatible with the neighboring community and not a pretext for unauthorized commercialization. Mr. Shubin was of the opinion that the Village's rescinding of the resolutions would not expose the Village to any liability unless the developer can establish that the Village intentionally impeded his ability to perform the conditions in a timely manner. He felt that the developer did not do that, and in fact, he believed there was evidence in the public record that some of the closings on the property within this development occurred as late as April 30, 2012. In concluding, Mr. Shubin said that rescinding the resolutions would not have a negative impact on the rights of third party property owners who were not a party to this proceeding, it would not constitute an admission of error by the Village and it would not provide his clients with any "strategic" litigation advantage in any pending litigation, but it would eliminate or result in the stay of all litigation that was pending before the Village. He noted that the litigation would be "mooted" by virtue of these resolutions being rescinded. He further explained that when a resolution is mooted, it is not adjudicated on the merits, it is not a confession of error and one has nothing to do with the other. He again raised the issue of the ethics violation which he said was a new piece of evidence which had not been before Council. Mr. Shubin said that there was a suggestion underlying all of Mr. Rosenbaum's arguments that under the Doctrine of Administrative Res Judicata, once the Council decided noting that they were all subject to appeals and he said he would argue that they were not final as a matter of law, that once Council rules it could never take any position to the contrary. He read then read Code sections 5.9ce and subsection 5.9.3d2 explained the actions that can be taken by Council after deliberation one of which is rescission. He stated that he would be shocked if the Council was told by their Counsel that they had no choice, but to reaffirm the actions of the previous Council under the Doctrine of Administrative Res Judicata where there is a separate procedure in place that specifically contemplates what happens when there is a resolution with a condition that fails and the applicant does not properly seek an extension in a timely way. He reiterated that the argument that Administrative Res Judicata pre-empts this procedure or ties Council's hands would put this entire provision out of existence. In conclusion, Mr. Shubin stated that it was the developer's burden to produce evidence to suggest that there is a legal basis that compels the Council under the Code to grant the relief that he was seeking which he believed had not been done. He pointed out that once that condition failed, the developer lost all of his rights and a new code provision came into place. He further stated that when Council follows that Code provision to the letter one of the options of Council is to rescind the resolution noting that he will argue that they also rescind the companion resolutions for different reasons. Because this was a very material condition under the circumstances, he felt that Council's action should be to rescind the resolution.

Mr. Schofield pointed out that Mr. Shubin made a representation that he had stated that an illegal subdivision had provided the basis for issuing permits. He clarified that he believed he had stated that there had been an illegal subdivision and he did not believe that he implied that prior act was any reason to issue permits. Mr. Shubin said that was absolutely accurate and he apologized if he said anything that was not correct. He said that he was specifically making reference to his recollection which went back several months that Mr. Schofield had referred to this as an "illegal" subdivision.

Councilwoman Gerwig asked Mr. Shubin who had filed the de-annexation law suit that staff had to review. In response, Mr. Shubin said that lawsuit was filed by his clients along with the Akerman Senterfitt firm. Councilwoman Gerwig asked what was the status of the lawsuit. Mr. Shubin indicated that the lawsuit was pending.

Councilwoman Gerwig asked staff to explain what is meant by an illegal subdivision. Mr. Basehart explained that the Code required that any time an original piece of property is split into two or more pieces that a plat has to be filed and recorded for the reconfiguration of lots.

Councilwoman Gerwig asked Mr. Rosenbaum if he agreed with Mr. Shubin's closing that if Council rescinded all of the resolutions that there would be no further litigation on this property. In response, Mr. Rosenbaum said that he disagreed with Mr. Shubin on many points, and just as he is a good advocate for his client, Mr. Rosenbaum's client had a lot to lose. He pointed out that there has been no evidence of any changed circumstances and he had previously objected to the ethics issue noting that it was only a probable cause finding from one member of an advisory board which was not binding on Council. He said that during the January 31, 2012 to February 2, 2012 hearings, the Council repeatedly stated the fact that these were advisory boards and their decisions were non-binding on Council. Mr. Rosenbaum said that they did not know whether or not there was a violation; however, he said that they would clearly have to protect their position and there had been no finding of guilt by anyone. He said that ethics issues are not the type of changed circumstances that are contemplated by Section 5.9. Mr. Rosenbaum pointed out that there had been no rebuttal in any way in respect to their case. He said that they were in a position where if valuable rights through these circumstances which he had described were revoked or through some adverse action taken by Council, they then would have to proceed and protect their position.

Councilman Willhite concurred that he had seconded a motion to table the item because the applicant submitted an application that was incomplete. He pointed out that he was told by the Village Attorney that it would take a short period of time and was ministerial. Councilman Willhite said that the application did not have the proper documentation when it was put on the Agenda. He said that Mr. Schofield had indicated at the Agenda Review meeting that they will no longer put items on the agenda that are incomplete. Councilman Willhite felt that since this was incomplete, it should not have even been put on the agenda. He further stated that advisory boards become part of the record when Council hears their recommendations. He said that Council utilizes the advisory boards to provide recommendations and although the ethics complaint had not been heard, it was moved forward to an investigation due to the Commission on Ethics not believing that the fine was adequate and that there should be more investigation done to a full hearing to hear the complaint.

Councilman Willhite said that it was no secret that he did not vote to support this when it originally was presented to Council and was not fully supportive of extending the timeframe. He said if there was a timeframe attached to something which was approaching, he thought that the applicant would have been before Council or sent in some type of correspondence requesting an extension; however, he never heard a request for an extension. He expressed his concern that the applicant was willing to accept the timeframe, but wasn't willing to say that they were at fault for not requesting an extension. Councilman Willhite said that he didn't understand that although this area was not platted, there were permits, improvements, discussion of sub-division of the parcel and other items. He said that he did not believe that there were just access ways because there were discussions of traffic, and what was going on the parcel. He said that it was known in the January 31, 2012 to February 2, 2012 proceedings that there was an item coming before Council where there would be improvements to that property and those access points were going to accommodate those issues noting that a previous item relating to this had been pulled from the agenda so some things have changed. Councilman Willhite thought that this might be the time to step back and work with the applicant. He said that he did not believe that the lawsuits would disappear because there would still be two people who have a difference of opinion. Reiterating that he felt things had changed, Councilman Willhite said that there was a difference of opinion on the FAR on the barns. He said that there had been discussions at prior meetings that the FAR did not count toward the barns which was disagreed upon by the Village staff. Councilman Willhite questioned how they could continue down the wrong road if things have changed.

He said that he had discussed with the Village attorney that Wellington continues to do things that cause them problems that have to be corrected. Councilman Willhite didn't feel that it was the petition for there to be an illegal subdivision, but is a fact that they are digging and finding a problem. He said that he also had a difference of opinion on the horse crossing on South Shore and Pierson. He believed that crossing needed to be about 500 or 600 feet back on the applicant's property on Pierson Road and not cause more problems at the intersection of South Shore and Pierson than already exist. Councilman Willhite also addressed the problem with parking that still needs to be addressed as well as a lack of a landscape plan and other such things that weren't being done. He further stated that he discussed with Mr. Bellissimo that he wants to sit down with him and the Village staff to work some of these things out. He further stated that the only problem that occurred with the election besides the snafu that tore the community apart on this issue which he felt was a sad thing. Councilman Willhite said that he wanted to try and fix these things. He noted that he had tried on another master plan to mediate an issue that night, and he was asked for two weeks to mediate an issue which wasn't granted. He felt that there was some room for working together. Councilman Willhite said that he has told Mr. Bellissimo that he has a lot of respect for him pulling the hotel off of the agenda and trying to work with the Village and the community to bring them back together. He felt that it would go even further if they would do all of this because it is still the entire project. Councilman Willhite said that as he had done before, he was not inclined to accept the master plan with the access points so he didn't believe that he was inclined to accept an extension of time at this point. In addition, he said that he didn't understand where staff had come up with the September 1st date if it was originally said to be easily done. He said that April 1st was the deadline, and when deadlines are accepted, then they have to take responsibility for them.

Councilman Greene said that later in the Agenda, Council would be making appointments to the boards and committees. With regard to the ethics violations, he said that even though no one had been found guilty of any ethics violation, even at an advisory level, they are held to the same ethics standards by the Palm Beach County Ethics Commission as the elected officials. Councilman Greene said that they do act in an advisory capacity to Council and if those recommendations come before Council, an ethics violation is concerting.

Public Hearing

A motion was made by Councilwoman Gerwig, seconded by Councilman Willhite and unanimously passed (5-0) to open the Public Hearing.

1. Chris Coffman. Was not present at the time her card was called.

Vice Mayor Coates read the following cards into the read:

1. Linda Elie. Ms. Elie's comments related to the problems with the traffic study and the traffic issues at the intersection of South Shore and Pierson Road. She said if the extension of time was granted, she recommended a contingency to redo the study during peak seasons.
2. Kim Jacobs. Ms. Jacobs opposed the extension of time.

A motion was made by Vice Mayor Coates, seconded by Councilman Willhite and unanimously passed (5-0) to close the Public Hearing.

With respect to the delay in the processing of the plat, Mr. Kurtz advised Council that they may want to hear from Mr. Bill Riebe, Village Engineer, because the Engineering Office is in charge of the plat work and he was the contact between the applicant and the applicant's representative who was Mr. Sexton. Mr. Kurtz addressed the comments regarding his conversation with Ms. Yaques and Mr.

Rosenbaum which he indicated was basically. He said that they did meet on March 6 which was one week prior to the March 13th meeting which was too late to have anything placed on an agenda. Mr. Kurtz said that if you go to the Minutes of the February 28, 2012, he recalled that there was testimony that he said that he had not received the POA documents at that time, but anticipated that they would be forthcoming. He further stated that the documents did come shortly thereafter, but he did not believe that he had received them on February 28, 2012. Mr. Kurtz said that he also did not believe that the corporate entity had been formed at the time of the February 28th meeting which was an issue as there was no entity to receive the dedication if the plat had been approved that evening. He said that if this application had been submitted to the Village so that it could have come on the April 10th Agenda, he did not believe that the staff would have brought this proceeding to Council. Mr. Kurtz further stated that the total title work was not received by his office until the mid-March time period. He reiterated that Council may want to hear from Mr. Riebe because he was charged with the task of securing the requisite compliance to put this matter before Council. As indicated in the staff report, staff believed that the matter was held up because of the conveyance of the property.

Vice Mayor Coates said that his understanding of Mr. Kurtz' comments was that if this matter had come before Council on the April 10th meeting which was after the April 1st deadline that he believed it would not have been presented to Council as an issue. In response, Mr. Kurtz felt that it would have been presented to Council as an issue; however, they would not have been having a 5.9 hearing, but rather would have had a hearing to consider whether or not to grant the plat approval. He explained that in order for it to have made the April 10th agenda, everything would have had to be completed prior to April 1st, and given the circumstances, it would have been placed on the agenda. He further stated that if at that point in time, Council felt that April 1st was the ending time, they could have directed that a 5.9 hearing be held although he did not believe it would have been initiated by the staff as this was in the late April time period when they were trying to get this matter on the agenda.

Vice Mayor Coates questioned who made the decision to make this a 5.9 hearing as opposed to just bringing it to Council if had been on the April 10th agenda. In response, Mr. Kurtz explained that Mr. Basehart was the person who was charged with that; however, he spoke with other members of the staff and they sought his advice and the Manager was made aware of this as well. He said that why this was brought as a 5.9 hearing was because there was a failure on the applicant's part to formally request an extension of time. He said that at the time that Mr. Basehart initiated the 5.9 hearing; the Village did not have a completed application as it was still not ready to be placed on the Council Agenda and was not ready for the May 8, 2012 meeting.

Vice Mayor Coates asked if any Councilmember had requested that staff make this a 5.9 hearing. Mr. Kurtz said not to his knowledge. Mr. Basehart stated that it had been staff initiated. Vice Mayor Coates said that bringing this forward as a 5.9 hearing was solely a staff decision. Mr. Basehart responded affirmatively.

Mayor Margolis said that Mr. Kurtz had indicated that he had six attorneys on staff that could fill in for him when he is on vacation or other such times just as his associate filled in at yesterday's Agenda Review. He pointed out that one of Mr. Kurtz' associates would have stepped in if in fact Mr. Kurtz couldn't get the things done that the applicant alleged he should have done. Mr. Kurtz explained that it was not a matter of him not getting things done or not responding in any way, but it was a matter of receiving information from the applicant noting that the complete title work was only received in his office in the mid-March time period. Mayor Margolis said it had nothing to do with the election or circumstances happening that last month. Mr. Kurtz said that if Mr. Rosenbaum was trying to reach him during the week with the election problem, he would say that he might not have been as responsive as he might have normally been as they were in a lot of meetings at that time; however, that wasn't the issue.

Vice Mayor Coates asked Mr. Kurtz if Mr. Rosenbaum had accurately reflected the conversation he had with him when he said he called in late in March asking what they were going to do since they were approaching the deadline and that Mr. Kurtz had made the statement that they would get an extension. Mr. Kurtz said that he did not recall that specific conversation or those specific words. He said that the sentiment of the April 1st deadline given the fact that if they spoke on the 27th of March which he didn't doubt, that was the night of the Council meeting. Mr. Kurtz indicated that the plat was not ready on March 27th to be received and he would have indicated to him that if the plat came in and it would be able to be placed on the April 10th agenda for Council consideration. Mr. Kurtz said that he does not have the power to grant an extension of time, and he didn't believe that he had represented that he had that power.

Councilwoman Gerwig referred to the C. Oliver Wellington issue and asked how that matter was resolved. She asked if that was all done through title work and was Mr. Kurtz comfortable that had been taken care of. In response, Mr. Kurtz said that he was comfortable with the title work and he would explain that if they get to the plat.

Mr. Bill Riebe presented the timeline for the plat.

- The plat application was received on November 30, 2011.
- On February 12, 2012, Wellington received revised land development plans as well as a revised plat that updated certain things which occurred after the public hearing.
- The plat was brought to Council on February 28, 2012. There were three things that were missing in their records: (1) POA documents; (2) no title work for the C. Oliver Wellington issue and (3) no signed mylars which are typically required prior to an item being placed on the agenda.
- On February 29, 2012, the Engineering Department received the C. Oliver Wellington information from the title company. The completeness of that documentation was sent to Mr. Kurtz for his review.
- The proposed POA documents were received on March 5, 2012. There were no legal descriptions included with those documents. According to the documents, it appeared as though they were filed on April 10, 2012.
- There was a DRC meeting on March 21, 2012 which was to re-do the subdivision and site plan based on the approved master plan and compatibility determination. He said that was a requirement or to at least update that before they go to the plat so that it reflects what those documents are.
- On May 3, 2012, Wellington received a plat resubmittal. The plat that was on the agenda was in that submittal.
- On May 16, 2012, Wellington received all of the plat information required to put the plat on the agenda on May 22nd.

With regard to the plat, Mr. Riebe said that they have to received tax receipts, there is a third party survey review to ensure that it is compliant with State Statutes, POA documents are reviewed, easement dedications, cross access easements and a host of things go into the final plat.

Mr. Kurtz asked Mr. Riebe if he was having regular conversations with Mr. Sexton during that time period inquiring about the status of the plat. Mr. Riebe responded affirmatively explaining that they stayed in contact not only with him, but with all of the developers. He said that it is not uncommon to have to chase everyone for the information so that it could be placed on the agenda.

Vice Mayor Coates asked when the applicant was first advised that the POA documents had been reviewed and approved by the Village. Mr. Kurtz said that it would have been in that late March period because Mr. Riebe had inquired as to whether or not there were any outstanding issues with respect to that, and he was advised that there was none; he then started seeking the signed mylars from Mr. Sexton.

Vice Mayor Coates asked if Wellington issued any type of letter or notice that notified the applicant when Wellington approved the POA documents. In response, Mr. Kurtz said that the communication for the plat process is through Mr. Riebe's office who deals with the applicant. Vice Mayor Coates then asked if there was anything in the Village's records which would indicate when the POA documents had first been approved. Mr. Riebe said that they could go back and look in the files. Mr. Kurtz explained that the issue that Mr. Riebe was dealing with was that they were unable to get Mr. Straub's signature on the mylars. Mr. Riebe pointed out that everything was third party, but there were issues with getting all of the owners to sign the mylars. He believed that there were some negotiations going on with the sale of the property which the applicant could verify. He noted that there was a variance requirement as part of one of the approvals and the idea was to try and get rid of that variance requirement to simplify the plat and the process.

Councilman Greene asked if receiving tax receipts was also a requirement of the plat. Mr. Riebe responded affirmatively explaining that the applicants have to prove that they have paid their taxes.

Councilwoman Gerwig asked Mr. Riebe if he believed that getting the issue with the variance was a good thing prior to the recording of the plat or would the requirement of getting a variance have delayed this even further. Mr. Riebe said that the variance would have required another step to come before Council. Mr. Basehart explained that originally there were three parcels on the plat, Mr. Brandt's, Mr. Bellissimo's and the cell tower site owned by Mr. Straub. He said that because it was such a small piece of property, the tower could not meet the setback. Mr. Kurtz clarified that the cell tower site was not owned by Mr. Straub, but rather by one of his entities. Mr. Basehart explained that a variance would have been required which would have gone to the Planning, Zoning & Adjustment Board for approval and not at the Council level after the plat was recorded because the lot wouldn't exist until the plat was recorded. He further explained that Mr. Bellissimo was able to purchase that site.

Vice Mayor Coates said that the plat could not be recorded until it is approved by Council. Mr. Riebe responded affirmatively. Vice Mayor Coates said that there was a dispute in the testimony as to when the applicant was told the POA documents had been reviewed and approved. He said that Mr. Kurtz recollects that it was late March. Assuming that is the case by that point in time the applicant could not have possibly met the April 1 deadline because it would have had to come to Council at some later meeting after that date. Mr. Riebe said that was correct.

With regard to Mr. Riebe's earlier comments about chasing developers, Mayor Margolis said that Mr. Riebe is very proactive making phone calls to the different developers advising them of what is needed which he understood was done with Mr. Sexton versus Mr. Sexton calling and saying that he was aware they were late and requesting additional time. He asked Mr. Riebe if he could recall any level of communication where that conversation took place versus him having to ask them for materials because the deadline was approaching. Mr. Riebe said that they had many conversations about the fact that there was an April 1st deadline and that they were pushing hard and were continuously trying to get all of the documentation in so that the plat could get recorded prior to April 1st. He said that the Village was never asked for an extension of time by the applicant. Mayor Margolis then asked Mr. Kurtz and Mr. Basehart if they also were of the understanding that the Village never received any request for an extension by the applicant. Mr. Basehart indicated that he had not

received any requests. Mr. Kurtz advised Council that Mr. Sexton was present and could speak to that.

Councilman Greene asked if the Council could approve the plat prior to taxes being paid. Mr. Riebe said that the tax receipts are required prior to bringing it to Council. Mr. Kurtz explained that the applicant would not be able to record the plat prior to payment of taxes. He said that just because there is an approved plat, it doesn't mean that they can go out and record it. Mr. Kurtz explained that often times there are improvements that are associated with the plat. He noted that there were two ways to have those improvements be in place so that it could be recorded immediately. The first way was to bond the improvements or the improvements can be completed. Mr. Kurtz said that it was not unusual to do either as it may take time to bond the improvements and more time to actually complete the improvements. He said that there could also be taxes that have been incurred between the time there is a plat approval and a plat recordation. He said that it is at the plat recordation time where the taxes absolutely must be paid. Mr. Kurtz said that it is good practice to have the taxes paid at the time that the plat is approved. Councilman Greene said that his question was being directed to this plat. Mr. Kurtz explained that there were improvements associated with this plat which weren't able to be completed by the next day so they would have to bond. Councilman Greene asked if there was a bond or when the taxes were actually paid. Mr. Kurtz explained that the bond does not get posted until after the plat is approved. Mr. Riebe further explained that the way the land development permit was set up; most of the improvements were built prior to the February timeframe. He said that they do have posted a cash bond for all outstanding improvements on site that were required. Mr. Riebe said that there were tax receipts with the initial application showing that they owed money, but they had until April 2nd to pay them noting that at this time all of the taxes had been paid on May 16, 2012.

Mr. Rosenbaum requested to cross-examine Mr. Riebe. He asked him to look at the end of the 2012-07 resolution and asked him if it said that the plat should be recorded on or before April 1st. Mr. Riebe indicated that the resolution stated that the plat should be recorded prior to April 1, 2012. Mr. Rosenbaum said that in light of that the tax argument doesn't make any sense. Mr. Riebe said that the tax receipts are required as a matter of the process. Mr. Rosenbaum's point was that the taxes came due on April 2nd and it would not have applied to this. Mr. Rosenbaum referred to the staff report of April 30, 2012 from Mr. Basehart with regard to the proceeding and directed Mr. Riebe to page 2 under background. He specifically was addressing where it said that "in the interim, the then existing title questions have been resolved to the satisfaction of the Village Attorney and the POA documents have been approved for recordation." He asked if there was anyone on staff who could provide any notice of any kind whatsoever prior April 30th that the POA documents were approved by the Village Attorney. Mr. Kurtz thought that they would have to look at the record of the March 22, 2012 DRC meeting. Mr. Rosenbaum challenged the staff to provide any notice to the applicant of any POA document approval prior to April 30, 2012.

Mr. Shubin then cross-examined Mr. Riebe. He asked Mr. Riebe who had the authority in the Village of Wellington to approve a plat. Mr. Riebe explained that he had that authority in his capacity as the Village Engineer. Mr. Shubin then referred to Florida Statute 177.081 which he read which addressed that prior to approval by the appropriate governing body; the plat had to be reviewed for conformity to the Statute by a professional surveyor and mapper and asked Mr. Riebe if he was familiar with it. Mr. Riebe said that he was familiar with that provision. Mr. Shubin then asked if a surveyor certification is an essential component to his approval of a plat. Mr. Riebe responded affirmatively. Mr. Shubin then asked Mr. Riebe to look at page 539 which showed the surveyor's certification from Sexton Engineering, and asked if Mr. Riebe had any question that Mr. Sexton certified the plat on or about May 15, 2012. Mr. Shubin asked Mr. Riebe if it was correct that certification was a pre-condition to his approval. Mr. Riebe responded affirmatively. Mr. Shubin said that this plat wasn't certified until May 15, 2012. Mr. Riebe indicated that was correct. Mr. Shubin said that if certification is a pre-condition

to Mr. Riebe's approval and that this plat wasn't certified until May 15, 2012, then a plat couldn't be recorded until either has been approved by Mr. Riebe or the appropriate municipal body. Mr. Riebe said that was correct. Mr. Shubin said that under no circumstances would the plat ever have been approved on or before May 15, 2012 based on the surveyor's certification that was in the record. Mr. Riebe said that was correct.

Councilwoman Gerwig asked Mr. Riebe if the review and approval occurred prior to the certification by Mr. Sexton. In response, Mr. Riebe said that was correct explaining that many of these things work concurrently. He said that the plat that was received was by a registered surveyor in the State of Florida which Mr. Sexton is. Mr. Riebe said that the third party surveyor is Engenuity who is the registered surveyor in the State of Florida. Councilwoman Gerwig asked what the date of their final review was. Mr. Riebe said that their review was included in the plat packet. Mr. Kurtz said that Mr. Riebe had testified that the plat had been received for review by the Village of Wellington on May 3, 2012 which was four or so days after they transferred the property between the Straub entities and the Bellissimo entities.

Mr. Rosenbaum then requested to cross-examine Mr. Riebe again. He then referred to the Wellington Council Agenda Summary for the February 28, 2012 meeting particularly page 165 of 545. He said that at the bottom of that page with respect to Polo Village it stated that "this replat has been reviewed by a licensed land surveyor, Engineering and PZAB for conformance with the approved master plan and site plan, Wellington Land Regulations and applicable codes and regulations. Based upon this review, the plat is in conformance with these requirements and therefore is recommended to be approved." Mr. Rosenbaum asked Mr. Riebe to explain that statement. In response, Mr. Riebe explained that for that particular iteration of the plat, it had gone through the entire process and the third party surveyor certified that the plat met Florida State Statutes 177. Mr. Rosenbaum said that would have occurred sometime before February 28, 2012. Mr. Riebe said that was correct.

Since Council had no further questions at this time, Mr. Kurtz said that it was appropriate to hear final arguments explaining that the procedure was to have the applicant speak last and sometimes offer the opportunity for interested parties to have a five minute argument.

At this time, Council took a five-minute recess.

Councilman Willhite indicated that a card had been submitted, but was not read.

Vice Mayor Coates read the following card into the record:

1. Chris Coffman. Vice Mayor Coates announced that she had indicated that she wanted to speak, but wasn't in attendance. Ms. Coffman had issues with the compatibility of the project as it was currently designed with the homes on Polo Island, and believed that the developer could be reasoned with to create a compatible project.

Mr. Kurtz announced that Mr. Rosenbaum wanted to present a rebuttal witness who would then be subject to cross examination.

Mr. Rosenbaum said that he wanted to call a rebuttal witness on the plat issue as well as Mr. Bellissimo.

Mr. Shubin said that he did not have any problem with Mr. Rosenbaum bringing on rebuttal witnesses as long as they were actually going to rebut something that was introduced after his case. He felt it was not appropriate if Mr. Rosenbaum wanted to put on Mr. Bellissimo or someone else simply to

argue the same points. Mr. Kurtz said that determination would be made when they heard the witnesses.

Mr. Rosenbaum called Mr. Sexton to testify. He showed Mr. Sexton three documents and asked him to explain what they were to Council. Mr. Sexton said that the first document was dated February 21, 2012 and it was the project surveyor's certification which was provided for the Polo Village II Plat. He further stated that he was certifying that there were no changes to the approved plats since the issuance of technical compliance and he submitted the plats through the process. Mr. Sexton said that they were provided black-lined copies for review which were reviewed by the Village and their consultant. He said that once they were approved by the consultant, he provided this certification which was made part of the record going before Council on February 28, 2012. Mr. Sexton said that the second document was a second surveyor's certification which were all signed and sealed by him and provided to the Village. He said that this surveyor's certification stated that all of the permanent reference monuments had been in place as required by Chapter 117 Florida Statutes dated February 21, 2012. With regard to the third document, Mr. Sexton said that it was a February 21, 2012 letter from Engenuity Group Inc. where Gary Raymond, a professional surveyor and mapper, stated that he reviewed the plat and it was in compliance with Chapter 177 Florida Statutes and the Village of Wellington's approved plat language dated February 21, 2012. Mr. Rosenbaum asked if all of these were submitted to the Village. Mr. Sexton responded affirmatively explaining that Engenuity submitted it directly to the Village and copied them, and the other two survey certifications that were done by him were provided to the Village Engineer's office. Mr. Rosenbaum asked Mr. Sexton to state what dates they were submitted. Mr. Sexton said that it was his belief that they were submitted on February 21, 2012.

Mr. Shubin then cross-examined Mr. Sexton. He asked Mr. Sexton if he recalled issuing a surveyor certification for the Polo Village II plat on or about May 15, 2012. Mr. Sexton responded affirmatively. Mr. Shubin asked if the plat that he had certified on May 15, 2012 had any differences from the plat that he had certified on or before February 21, 2012. Mr. Sexton explained that there were some differences primarily in ownerships. Mr. Shubin said that as part of the certification, Mr. Sexton identified all of the changes to the plat for which they were seeking certification on May 15, 2012. Mr. Sexton said that they noted all of the changes from the February 21, 2012 plat to the current one that was updated for final recording which was on the agenda later that evening. Mr. Shubin referred to sheet 1 of the plat that stated that the dedication was revised to delete Palm Beach Polo Inc. based on the ownership transferred by the attached warranty deed that was recorded in the official record book 25174, Page 462. He asked if that transfer occurred after February 21, 2012, and Mr. Sexton responded affirmatively. He then asked if it was correct that it had occurred after April 1st to which Mr. Sexton stated was correct. Mr. Shubin said that Mr. Sexton had noted that the plat was amended in as much as the mortgage consent for Palm Beach Polo Inc. was removed from the plat based on the satisfaction of mortgage as recorded in official record book 25174. He asked if that mortgage satisfaction occurred after April 1st. Mr. Sexton said that he believed it had. Mr. Shubin asked Mr. Sexton if he was familiar with Chapter 177.081 of the Florida Statutes which deals with dedication and approval. Mr. Sexton said that he was familiar with that. Mr. Shubin then asked Mr. Sexton if he was familiar with the resolution that had been issued by the Council as it related to the access points onto Pierson Road. Mr. Sexton responded affirmatively. Mr. Shubin asked if he agreed that condition #7 noted that the proposed plat of the 96.3 acre property shall be recorded prior to April 1, 2012. Mr. Sexton said that it was his understanding that was a condition of the resolution. Mr. Shubin asked Mr. Sexton that as a surveyor was it his understanding that a plat could not be recorded until it has been approved as required by a local municipality, and Mr. Sexton indicated that was correct. Mr. Shubin asked Mr. Sexton if he agreed that prior to the approval there has to be some form of certification, and the certification was dated May 15, 2012. Mr. Sexton agreed that there had to be some form of certification prior to approval and the certification dated May 15, 2012 was the plat that was on the

agenda with the corrections. He explained that there was a previous plat that was prepared and was on the agenda in February that he certified and provided those additional certifications prior to it going before the Council on February 28, 2012. Regarding the plat for which the applicant was seeking approval for that night, Mr. Shubin asked if that plat as a matter of law was consistent with Chapter 177.081 could never have been recorded prior to April 1, 2012. Mr. Sexton explained that the actual document that was being presented that night represented the current ownership so the plat that would have been recorded prior to that date would have reflected the ownership at the time the plat was certified and approved by the Village. Mr. Shubin asked Mr. Sexton if he was familiar with a Mandamus Proceeding to which Mr. Sexton said he was not. Mr. Shubin asked Mr. Sexton if he understood that if he or his client believed that he had a clear legal right to have a plat approved by the Village, he could have instituted a proceeding known as a Mandamus Proceeding and argued that the Village was required to approve and accept the plat. Mr. Sexton reiterated that he was not knowledgeable about that proceeding.

With respect to the Mandamus Proceeding, Mr. Rosebaum asked Mr. Sexton if he was aware that if the plat was not approved that a Mandamus Proceeding could be brought consistent with what was stated by Mr. Shubin by the applicant. Mr. Sexton said that based on Mr. Rosenbaum's legal instructions, he understood that.

Mr. Rosenbaum then called upon Mr. Bellissimo for rebuttal. Mr. Bellissimo said that the signatures on the plat prior to April 1st included Palm Beach Polo Inc. and the POA which were the two unsigned parties. He explained that at the time, they were waiting for comments back from Mr. Kurtz on the POA documents. Mr. Bellissimo said that he asked on a number of occasions through their intermediaries to get that feedback which was never received. He said that the gating factor on getting back any of the signatures prior to that date was the letter that they received on May 7, 2012 that was pre-dated or was delivered on April 30, 2012. He said that from the time of April 30, 2012 confirming the POA, they had the plat in the Village within three days of receiving the letter from Mr. Basehart that the POA documents were approved which was the first and only time there was indication they were approved. Mr. Bellissimo said that they could not present it to Council until they received approval. He said that he as the POA President could not sign without getting that approved on the mylar. Mr. Bellissimo reiterated that based on the Village not providing them with the feedback, the earliest they could get that done was on May 7th. He said if they had received the POA comments back on May 6th, they would have put it on the Agenda. Mr. Bellissimo said that he had a deal to get it signed once he got the POA documents with Mr. Straub, and since they couldn't get it on the Agenda, it didn't matter. He said that the point was that they had an opportunity to pay off the mortgage and reduce the variance issue so they waited and did it. He said that they ended up adjusting the survey for the May 10th submission that was certified by Mr. Sexton and was placed on the Village Council Agenda for May 22nd. Mr. Bellissimo said that the sole gating factor is that they had no ability prior to that date to get POA review from Mr. Kurtz and the rest of it is semantics. In reference to this, he said that the spirit and intent was not to abuse the system or have a delay or not honor a condition. He said that he could see if Council said that the applicant ignored the condition and would resolve it later. He said that at the end of the day, they made numerous attempts. Mr. Bellissimo said that his understanding through his Counsel, that in the late March or March time period, there was a verbal request for an extension. He said that his understanding was that Mr. Kurtz is an agent of the Council and he had the right to extend it. He further stated they were waiting for an e-mail from Mr. Kurtz that would grant that extension, but it never came. Mr. Bellissimo said that he believed there was a request for an extension albeit it wasn't written, but it was an attempt on their part to try and do that. He further stated that if the master plan was not approved then the plat couldn't be approved and then nothing could be built there and there are no Certificates of Occupancy for those structures which is an impact and would create a problem. He said that the issue that Mr. Shubin had raised related to the fact that the barns were built without a plat being recorded. He said

that his understanding from meetings he sat in with Mr. Kurtz and other staff was that if it is an illegal subdivision and they inherited it that the only recourse to get building permits and CO's was to get every homeowner to sign off on every permit. He said that every permit that he requested received Peter Brandt's signature, Palm Beach Polo and all others. Mr. Bellissimo said that was the process that was presented to them as the alternative in order to get building permits which he felt was consistent with appropriate Village protocol based on Mr. Kurtz' position. He said that they did not built things without any permission. In conclusion, he said that despite people's view that this was an unimportant vote, he felt it was to the contrary. Mr. Bellissimo said they have tried, with great intention, to make an impact on the community. He viewed this as being punitive because he questioned what harm had the delay caused. He reiterated that they tried to invest in the community and do things that would have a positive impact. Mr. Bellissimo said he was a good corporate citizen investing in the schools and his other philanthropic efforts, and he felt it was inconsistent with Council's efforts to just ignore an intent to get this resolved. He said if it was a month late based on the fact that they couldn't get it done until May 7th, he felt it would be extraordinary for this Council to turn back the clock and he hoped that they were building the future and not breaking it down.

Mr. Shubin asked Mr. Bellissimo if he heard Mr. Riebe state that one of the conditions of the Land Development Permit that was issued by Wellington with respect to Equestrian Village was that the property be platted prior to a CO or CC. He said that he did not specifically hear that, but he assumed that he was accurate in his representation. Mr. Shubin asked if either Mr. Bellissimo or someone on his behalf had obtained from the Village of Wellington on or about December 2011 a Land Development Permit which was a necessary pre-condition to the commencement of construction on the site. Mr. Bellissimo said that he was unaware of that and assumed that whatever was necessary was done by their representatives. Mr. Shubin asked Mr. Bellissimo if he was testifying under oath that he did not have an understanding that one of the conditions of the Land Development Permits which was pulled in December 11, 2011 that gave forewarning that a plat was necessary prior to a Certificate of Occupancy or Certificate of Completion. Mr. Bellissimo said that he believed through their representatives they handled it and they were compliant with what the Village obligations were. Assuming his representatives were compliant, Mr. Shubin said that either Mr. Bellissimo or people working on his behalf knew as early as December 2011 that a plat would be a necessary pre-condition to a Certificate of Occupancy or a Certificate of Completion. Mr. Bellissimo said that he was unaware of the details.

Vice Mayor Coates asked if this was a proper area for cause for a rebuttal. Mr. Kurtz indicated that there had been no objections. At this point, Mr. Rosenbaum voiced an objection stating that it was highly irrelevant. He said that there was an issue concerning the revocation of the Certificate of Occupancy and Certificate of Completion and it was obvious that Mr. Shubin was taking the opportunity to obtain testimony on that. He felt that it was inappropriate just as the admission of the ethics issue.

Mr. Shubin said that he was laying a predicate for a question that he believed goes to the resolution at issue in this case.

Vice Mayor Coates asked Mr. Kurtz if, as a sitting Council, they were not obligated to hear testimony even in the absence of an objection that they believe exceeded the scope of rebuttal. Mr. Kurtz said that was correct. Vice Mayor Coates felt that this exceeded the scope of rebuttal and they needed to move forward.

Mr. Shubin said that he had made an objection to Mr. Bellissimo testifying as a rebuttal witness beyond the scope of what had previously been testified to, and he patiently listened to him go way beyond that. He asked to be allowed to ask several more questions which he felt were relevant.

Mr. Shubin then asked Mr. Bellissimo if he had an understanding with respect to the February 1, 2012 resolution at issue in this case that condition #7 stated that the proposed plat of the 96.3 acre property shall be recorded prior to April 1, 2012. Mr. Bellissimo said that he understood that condition. Mr. Shubin asked Mr. Bellissimo if, as of April 1, 2012, did he or entities under his control own all 96.3 acres of the property. Mr. Bellissimo responded negatively.

Mr. Rosenbaum said that Mr. Bellissimo was present when Mr. Riebe said that the initial plat was submitted on November 30, 2011, and did that occur. Mr. Bellissimo indicated that was correct.

Mr. Kurtz said that they could move to the final arguments. Vice Mayor Coates asked if Council had the option to dispense with final arguments, and if so, he moved to dispense with them. Mr. Kurtz indicated that Council did have that option.

A motion was made by Vice Mayor Coates, seconded by Councilman Greene and passed passed (4-1) with Councilwoman Gerwig dissenting, to dispense with final arguments.

Vice Mayor Coates said that he had previously stated that he felt that Council was used as a pawn for some ulterior motive, and he felt that they were being used that way at this time. He said that he felt that way because there is litigation already pending that addresses most if not all of the issues that have been raised by the interested parties in opposition to the applicant's position. Vice Mayor Coates felt it was disingenuous to the ultimate degree to say that if Council failed to extend the time to plat, it would not result in a strategic advantage. He said that if Council did not extend the time to plat, then effectively Mr. Bellissimo was right in that they would create problems with the master plan that had been approved as well as with the commercial designation which they would be deciding later. He said that Mr. Shubin was incorrect in that his case becomes moot because he has achieved in this forum what he was trying to achieve in the litigation. Vice Mayor Coates believed that they needed to ask what this forum was being used for if all they were being asked to consider was the extension of time to file a plat that is a fairly ministerial act that is done all of the time and rarely with any debate. Vice Mayor Coates said that he had not heard any evidence that there was any prejudice that would be caused by approving the extension that was being recommended by staff. He said that this is the Village staff that Council relies on to look at these situations and advise if there is any harm that has been caused by the delay. In the absence of any harm, Vice Mayor Coates stated that he had a very difficult time not extending the time for the plat to be filed. He said that when you start to look at the history and how they got to this point, there are special circumstances. Vice Mayor Coates thought that perhaps his motion on February 28th not to approve the plat conditionally had started the entire process. He was of the opinion that they should not be approving those things on a conditional basis and he felt that was a right decision that night. He believed that what happened beyond February 28th was beyond dispute. He said that there were problems with respect to the election that resulted in delays. Vice Mayor Coates said that Mr. Kurtz would probably not admit that he was overwhelmed, but he believed that those were very trying times for the Village and for the Village Attorney. He thought that it would not be out of the realm that there were some delays that were caused by Wellington's own internal actions. Vice Mayor Coates said that he had a difficult time punishing the applicant when he believed that Wellington contributed in some part to the delay. He didn't believe they could punish the applicant for not timely filing the plat when the Village wasn't able to respond to the POA document issue in a timely fashion. He further stated that if April 30th was truly when the applicant was advised that the POA documents had been approved, then he agreed that the plat could not have been recorded prior to the review of the POA documents. Vice Mayor Coates stated if the Village was just getting that approval out on April 30th, then the applicant couldn't be punished because they failed to do something by April 1st when they were waiting on something from the Village that didn't get done until April 30th. He said that was another reason why he would have a very difficult

time not extending the time for the recording of the plat. In addition, he said that he understood both sides of the positions noting that he had voted for the master plan amendment and the commercial designation; however, he voted against the Comprehensive Plan amendment that would allow the large-scale hotel. He said that he was constantly trying to balance what he viewed to be in the best interest of all of Wellington versus ensuring they did everything possible to preserve the Equestrian Preserve as well as the equestrian industry in Wellington. He noted that his biggest concern was that Council spent a great deal of time deliberating the pros and cons of the master plan and they ultimately approved it because they wanted to encourage dressage as an industry in Wellington and no other person had made any capital investment to bring that to the community until the applicant had done so in this instance. During the three days of hearings, he heard that people were not opposed to dressage and the primary opposition had to do with the hotel. Vice Mayor Coates said that he was now getting a sense that changed to some extent because the actions that were taken were the type of brinkmanship actions that threatened to kill dressage in Wellington before it takes off which he felt was detrimental to the equestrian industry and to all of Wellington. He reminded Council that they don't represent the Equestrian Preserve or the equestrians, but all of Wellington. He said that about 90% to 95% of Wellington's population is non-equestrians. Vice Mayor Coates was of the opinion that what they were risking was jeopardizing a new equestrian industry coming to town that has the potential to create jobs as well as livelihood for the Wellington residents both equestrian and non-equestrian. He pointed out the seasoned nature of the equestrian industry, and believed that the Council needed to encourage something that extends that equestrian season to enhance the summer businesses. Vice Mayor Coates felt that they were now locked into a dispute that was personal between the applicant and the interested parties, and that Council could not allow themselves to be embroiled in that dispute. He also was of the opinion that they had the obligation to defend the decisions that Council made until the courts say otherwise, and what was occurring that night was an effort to try and achieve a decision before the courts determined that the Village was wrong. He felt that if they don't stand by the decisions that they make, they will be perceived as a weak Council. Vice Mayor Coates believed that any time they had to make a difficult decision they would hear that they were a weak Council and if they rule against something sue them and they will buckle. He thought that was the precedent that they were being asked to set. He further stated that Councilman Greene had stated that it was more than just access points. He said that if this was just a master plan amendment without the commercial designation being involved and without the original planned development of the hotel; he guaranteed there would be no issue with respect to these access points because for the most part that was all that was approved. Vice Mayor Coates felt that the reason there was an issue was because the applicant came in with the whole picture at the onset which doesn't often happen. He said that they still had to look at each item separately from what they were going to be deciding later on. Vice Mayor Coates admitted that it was difficult during those hearings to do that because they knew that it was ultimately leading to the Comprehensive Plan amendment. He said his point at this time was that they should not be making more of this request than it was because extending the deadline to plat only kept in place a master plan amendment that had been approved by Council and only to the extent it referenced the access points.

Vice Mayor Coates continued stating that he was troubled by the fact that the applicant did not seek an extension on something this important and critical to their goals with respect to this property and to the interest of Wellington; however, he said he had to look if there was any prejudice. He felt that a 45 day or so delay in getting a property recorded was a very de minimis amount of time because normally people have years to record plats. He thought that the Village was having a major hearing trying to reopen an old can of worms on a 45 day issue of a plat approval which he felt was crazy. He said it was crazy because he didn't believe they should be in this position, but thought they were because both sides made a decision that this was going to be a scorched earth approach and regardless of what the other side does, they will oppose it even it is something as simple as keeping a master plan in place. He said that they will come back and if they don't win on item a, then will come

back on item b and so on, and if they don't win here they will continue their fight in court and try to win there. Vice Mayor Coates thought that they made a mistake as Council getting embedded in that because any decision would result in the Village getting sued noting that they were already being sued because of the decisions they made in January. He said if they took a step back and turned the clock back, then Mr. Rosenbaum was going to sue the Village. Vice Mayor Coates said that he was not afraid of being sued by either side, but that any time the Village is locked in litigation, there is a cost to all of the residents. He thought that the best that Council could do would be to make a decision that was in the best interest of all of Wellington. He said that Councilman Willhite had made a comment that there would be no losers; however, he felt that if they decided not to extend the platting deadline that the applicant would clearly be a loser because they have made a significant investment in this property in an attempt to bring the dressage industry to Wellington. He also thought that the Village would be a loser because they will have taken a step back from their earlier decision in an effort to bring dressage to Wellington and create an economic environment that would benefit both the equestrians and the businesses within Wellington. Vice Mayor Coates said that he believed that the Preserve is entitled to be protected. He said that he asked the question at the first hearing that it doesn't matter that this property was on the northern edge of the property, it is still within the Preserve and in order to make a Comprehensive Plan Amendment they would have to go a long way to convince him that it was something that they would want to do noting that he voted against that. He said that what he was trying to convey is that he is a Councilmember who is committed to preserving the Equestrian Preserve and to ensure that it is used for equestrian purposes. However, he said if the Equestrian Preserve in Wellington's Land Development Regulations were interpreted the way that the interested parties have attempted to interpret them at this meeting, then he believed that the showgrounds would never have been approved at all. He said that the issues that exist with the showgrounds are more significant than those that exist with the commercial use of these dressage facilities at a four-way intersection. Vice Mayor Coates felt that Council needed to be consistent. He said that they made a compatibility determination with respect to the showgrounds and this is a commercial equestrian facility that is embedded within a residential area; however, that statement couldn't be made about the dressage area or arena. He questioned how they could be treating this area so much different than they treated the showgrounds. Vice Mayor Coates thought that when they asked themselves that question, they would realize that they really can't because this particular site is better situated than the existing showgrounds for the Village of Wellington to be conducting commercial recreation activities.

With respect to the other items that will be coming up later in the agenda, Vice Mayor Coates said that he knew that everyone had personal interest and motivations involved in this, but he did not feel that the Council could be held hostage as to any one particular view or vision for the development of this particular area of the property. He said that their vision has to be governed by what is best for all of Wellington and not just the residents of Pierson Road. Vice Mayor Coates felt that his position would not be a popular one for some people because everyone wanted to jump to the conclusion that anybody with the name of developer or that title was a bad thing. He said that there is no question that developers do bad things, but they also do good things. He felt that they could not lose sight of the fact that just because there is a developer in the community proposing this project, it didn't mean it was a bad thing. Vice Mayor Coates said that he never perceived it as that, but also looks at what is the development, how does it impact the community at large and who will ultimately benefit. He said that he didn't subscribe that just because it is Mark Bellissimo seeking this extension that he is a bad guy or developer, but commended him for the capital investment that he has made in this project. Vice Mayor Coates pointed out that no one else has stepped forward and announced they were going to promote their own dressage facility and make the capital investment. With that in mind, he asked Council if they make them take a step backwards and undo the decision that was made several months ago to pursue dressage and allow the commercial use of these facilities, then who would come forward and make the capital investment for dressage. He further stated that he disagreed with

Mr. Shubin's statement that this will not be the death of dressage because Mark Bellissimo could decide that he was tired of dealing with the Village or with this type of opposition and he could take his money and leave which would be his prerogative although he hoped that wouldn't happen. Vice Mayor Coates further stated that he didn't believe that the opposition could say that dressage would be safe if there wasn't a plan approved for the area where that arena had been approved where the permanent commercial designation was being attacked. He further stated that he did not want to be in a position each year where they were engaged in these types of hearings which he felt was being suggested with regard to special use permit. He stated that this should be done one time as was the decision that had been made which they needed to go with. Vice Mayor Coates reiterated that he did not want to go through that every year and felt that they should grant the motion for extension. He felt that the failure to meet the deadline and time involved was de minimis, and he was not totally convinced that the problem wasn't created by things that were done because of situations that were occurring in the Village at that time.

Councilman Greene said that he respected Vice Mayor Coates' opinion and the applicant and everyone who committed their time and resources to this project. He said that he was not part of the original process, and that Vice Mayor Coates spoke of many things which were his opinion. He felt that the important thing was to address the facts that had occurred. Councilman Greene stated that they do have a responsibility to all of Wellington and there is a process in place where everyone is held accountable to the same standard. He believed if the Village started to bend the rules and grant exceptions, there would be a potential for serious litigation in the future. Councilman Greene also raised concerns over the comments that had been made suggesting that Mr. Kurtz had given verbal extensions to the applicant noting that Mr. Kurtz indicated that he had not given any such extensions. He then indicated that he believed there in fact had been a change in circumstance. He said that as Councilman Willhite had stated that based on what has been developed the FAR standards have changed. He said that he also believed that there was a clear violation in terms of not adhering to the conditions in a timely manner. Councilman Greene said that no one was more familiar with the delays in the election better than Mayor Margolis, Councilman Willhite and himself. He didn't understand how a snafu with an election would interfere with an applicant who has a strong passion for doing something for the community which he believed to be a valuable commitment. He believed that if the applicant felt that there was a delay due to the problems that prevented him from meeting the conditions in the timely manner, then a request should have been submitted for an extension and brought before Council. He didn't believe that any action taken by Council that night would prevent the applicant from operating the dressage facility. He believed that dressage would continue since there were many people who had an even greater passion for dressage. Councilman Greene said that they were not hearing this because Council was trying to undo something that had been done, but because the applicant failed to meet the conditions in a timely manner. He said that they were holding this hearing at the discretion of staff. He further stated that this does not close the access points to any of the dressage whether it is White Birch Farms or the Equestrian Village. Councilman Greene believed that if White Birch Farms wanted to construct a barn on their property they had the right to do so if they filed the property permits. In response, Mr. Schofield noted that the signature of every person who owns property in the 96 acres would be required. Mr. Kurtz added or they would have to submit a plat. Councilman Greene said that Mr. Bellissimo's attorney had described the process as something that took a matter of days; however, the applicant did not comply with what had been described as a very simple requirement. He expressed concern that once a process is created, an applicant comes in and conditions are imposed, then they begin to change the rules; it would create a huge liability for the Village in the future. He said that he made his position clear throughout the campaign. Councilman Greene said that he would not support granting an extension for this for the reasons he described; however, he hoped that they could continue to work together and find ways to continue to develop dressage.

Councilman Willhite said that he respects that he and Vice Mayor Coates differs yet are agreeable to argue their points, but they both feel that their work is in the best interest of the Village. He said that from day one he took on the tough decisions on issues dividing the community starting with Palm Beach State College to this issue dealing with this equestrian issue. He said that the tough decisions that are best for the community are made at the Council level that they all have to answer to. Councilman Willhite pointed out that he was not afraid of litigation, but was fearful that it had the potential to raise the legal fees which wouldn't stop him from doing something which he felt was correct. Councilman Willhite noted that he had not initially supported this, but was able to move on. He said that no one on Council brought forth the 5.9 hearing, but it was brought forward by a staff member that saw that an applicant did not follow the rules. Councilman Willhite said that he had concerns that an applicant would not follow a resolution with conditions if they allow the rules to be bent. He said that rules are put in place to be followed, and it can't just be said they should be bent a little. Councilman Willhite referred to the question raised to Mr. Kurtz as to what would have happened if it was brought on the April 10th agenda and that it would have been moved forward. He said that he was concerned about that, but it was clarified by the fact that the Agenda work is done prior to it being published. With regard to the item being pulled from the Consent Agenda and placed on the Regular Agenda on the February 28th agenda, it gave Council the opportunity to discuss it and see that all of the documents that were not in place and it was then tabled. He felt that at no time should the Village support anything that is not properly done, and staff should not be put in the position to place it on the Agenda and then have to go back and hopefully get all of the documents. Councilman Willhite noted that he has faith in the staff, especially Mr. Riebe, that everything was done in order to get the documentation in place. He did not believe that Mr. Riebe would put his professional certification on the line. He further noted that until recently Mr. Riebe and his staff held weekly meetings with the applicant, and he could not see how there was any lack of communication. Mr. Riebe noted that the meetings ended in February, but they met as well as had telephone conversations and were in constant contact with all of the developers.

Councilman Willhite further stated that it was not his intention to undo anything, and the fact that he did not previously support this had very little bearing on the fact that what was passed by the majority of Council wasn't followed. He did not believe that they could bend the rules since the stipulations were not met. Councilman Willhite pointed out that it was a very difficult decision because there were other parties that were being affected by it. He said that he thought that they should go back to the drawing board although he was not using this as a tool to do that as his position has been very consistent. Councilman Willhite said that he would not grant the extension, and hoped that they could come back and work on this. He believed that dressage would not die as there is a large investment and if they all work together they will make it a much better facility that will bring bigger and better dressage to Wellington.

Councilwoman Gerwig noted that there have always been divisive issues before Council even before she sat on it. She stressed that she was not a divider, but rather a person willing to work on issues. She said that when they sit on Council they will have very tough decisions to make which is part of their responsibility which she was willing to do. Councilwoman Gerwig noted that Councilman Willhite had stated that this was brought forward by staff; however, she pointed out that staff's recommendation was approval for the extension to record the plat; however, he disregarded that.

Councilman Willhite said that he was not disregarding Council's recommendation. He then asked Mr. Basehart if he brought this 5.9 hearing forward. Mr. Basehart responded affirmatively explaining that it was required by the Code.

Mayor Margolis stated that this was a very difficult decision for him. He said that there will always be divisive issues coming before Council. With regard to this issue, he felt that what really divides the

community is the principle of bending the rules. He said that he has always believed that although he might not agree with the rules and regulations, they are made and cannot be bent for only a few people. Mayor Margolis said that he has heard repeatedly in the community that rules are bent for some people and not others. He said that he sat through the three-day meetings and he did not believe it to be a surprise that he would have voted differently. Mayor Margolis said that what the Council voted for was to have a time certain for the platting of the property which then was followed by litigation. He felt it to be disingenuous to see what the previous Council had voted for and then bend the rules. He said that he looked at the bigger picture of bending the rules, and looked at how the rules are bent for particular people and then he has to go and explain to others why that was done. Mayor Margolis said that staff did not tell him that they received one piece of information requesting additional time. He said that those types of requests had been received previously and they were done. He said that the applicant has made strides so that there is a dressage facility and a successful community; however, there comes a time when the Village say no more which he believed was now. Mayor Margolis said that he did not want Mr. Bellissimo to believe that this was personal, but he felt it was part of the process where there was a resolution with a condition in place which was not adhered to and there was no request for an extension of time. He said that he also has not heard from staff that it was their doing that the condition was not met. Mayor Margolis concurred that there was an election, but the Village still operated every day during that election and during the recount. He said that it was also his understanding that the dressage facility and equestrian shows operated successfully during that timeframe. He said that he couldn't support the extension because you have to say these are the rules and regulations which need to be followed by everyone. Mayor Margolis hoped that they weren't in this position, but thought it might be a good opportunity to go back and start over again. At the previous day's Agenda Review meeting, a question was asked of Mr. Kurtz' associate whether this was being used as a guise to open up and review what had previously been done. He said that she responded that it was not the Village's fault that they were here, but because of the applicant's failure to properly plat within a designated time.

A motion was made by Councilman Willhite, seconded by Councilman Greene to rescind the approval for the entire project for failure to comply.

Mr. Kurtz said that there was going to be a Finding of Fact that the applicant violated Condition of Approval #7 noting that a resolution would have to be drafted with respect to that. He recommended that the motion would be to find that the violation existed and that the result would be the revocation of the approval of Resolution No. R2012-07. He then questioned that when the analysis is done if it was found that it violated Wellington's Land Development Regulator or the Wellington's Comprehensive Plan. Mr. Kurtz said that the suggestions of those issues have come from the May 22nd letter that was filed by Mr. Shubin which has a listing of suggested reasons why this is done: inconsistency with the land development regulations, that the application does not have a joinder and/or consent of the access parcel.

Vice Mayor Coates asked Mr. Kurtz if he was suggesting that staff was wrong on every point in the staff report. Mr. Kurtz said that he was suggesting that if Council has going with that motion, they would have to make a determination stating state what it was that they had violated. He said that if that wasn't done, the Village would not be in a good position to defend it when the challenge comes.

Councilman Willhite said that Mr. Basehart had suggested that there was a failure to certain Condition of Approvals of Resolution No. R2012-07. Mr. Schofield said that would then be a failure to comply with the Land Development Regulations. He said that their Finding of Fact could be that the applicant failed to comply with the terms of the Land Development Regulations as they apply to the conditions that were included in the approval and then they could vote to rescind.

An amended motion was made by Councilman Willhite, seconded by Councilman Greene, that Council's Finding of Fact relative to this was such that the applicant failed to comply with the terms of Wellington's Land Development Regulations as they apply to the conditions that were included in the approval of Resolution No. R2012-07, and that the approval of that Resolution is hereby rescinded.

Vice Mayor Coates said that he generally agrees that they don't want to be in a position of bending the rules; however, he said that is done at some level every day at the Village because of extenuating circumstances or special situations. He said that they would be setting a precedent that under no circumstances would Council ever exercise its discretion to grant a belated extension of a request that wasn't complied with or any homeowner who has been given a code violation fine and the decision to cut that fine. Vice Mayor Coates felt that if they go in that direction they would be setting a very dangerous precedent as to how the Village operated. He said that what they would ultimately be doing was sending the message to staff that when it comes time to negotiating code compliance fines and those matters where they are bending the rules to some extent because they are recognizing exceptional circumstances which they would be taking that away. Vice Mayor Coates said that he would be very careful to say that the rules are the rules and they can't be modified or Council couldn't hear evidence of extenuating circumstances and can't make the decision not bending the rules, but Council making an informed decision that there was justifiable cause for the failure and that based on that cause a decision is then made. He believed that there would be times in the next couple of years where they would be asked to approve something that has expired or something of that nature. He didn't want to give the impression that they were saying don't ever bring it before Council because he felt that every circumstance depends on its own set of facts.

Councilman Greene said that his concern was what type of precedent did they want to set. He questioned whether they wanted to set a precedence that if something wasn't followed properly that they would allow it or did they want to set a precedent that they would hold everyone to the same standards. Councilman Greene said that they have a clear process with everyone having the same opportunity to comply with Council's direction.

Vice Mayor Coates said that he did not want to set a precedent that because of whatever political position people assert during an election or campaign that would significantly change past decisions of Council where he felt this was headed. He said that Councilman Greene had stated what his position on this was prior to the election noting that Councilman Willhite's position has been evident and consistent since the onset. Vice Mayor Coates said that he has never felt that in all of Councilman Willhite's decisions that he didn't have the best interest of Wellington at heart.

Councilman Greene took exception to the implication that his position was more for political favor than what was best for Wellington.

Mayor Margolis said that he didn't mean that everything is black and white, but his intention was that there are rules and principles and he was tired of looking the other way. He said that he recalled that when the previous Council was deciding at the marathon meeting in January about approving a road that had been built in the middle of the night through a "permit at risk" which he said he had never heard of. He said that he remembered the angst that they had as they felt it shouldn't be done. Mayor Margolis thought that while this might not be of the same magnitude as that, he still felt it fell in the same category of doing something, then asking for forgiveness and then Council has to make up the sins of the past. He said that he didn't want to give the Special Magistrates any type of indication that Wellington was not a user-friendly Village, but there has to come a time where the Village says no more which is what he was doing at this time.

Councilman Greene then called the question.

The motion was passed (3-2) with Vice Mayor Coates and Councilwoman Gerwig dissenting.

Mr. Kurtz indicated that a resolution would be prepared and would be available for signature at the next meeting.

Mr. Schofield advised Council that according to Wellington's Rules and Procedures a vote was needed by Council to go past 11:00 p.m. He noted that there were two other items that would be fairly long, and Council may want to decide how late they wanted to go or if they wanted to reconvene the next day.

With regard to the other matters, Mr. Kurtz advised that there was a situation where the failure to plat and without the underlying master plan which was now revoked, the ability to have the commercial equestrian arena itself may be in question without the master plan because they would not be able to plat.

Vice Mayor Coates asked if Mr. Kurtz needed time to make that legal determination. Mr. Kurtz thought that Council might want to hear from the applicant whether or not he thought it is worth having the hearing. Vice Mayor Coates said that he wanted Mr. Kurtz to advise them whether it was a superfluous hearing or not because it was, he would move to table it until a determination on that would be given. Mr. Kurtz said that he wasn't sure it was superfluous because he didn't know how they would avoid making the same decision since now they have a changed circumstance as they have disallowed the plat occurring in the other item.

A motion was made by Vice Mayor Coates, seconded by Councilwoman Gerwig, to table Item 7E: Status Report for Equestrian Village Commercial Equestrian Arena Compatibility Determination until a determination is received from the Village Attorney as to the impact the action on item 7D had on this item.

Mr. Kurtz asked Council if they wanted this brought back at the next meeting. Vice Mayor Coates said that would be fine, but he wanted Mr. Kurtz to have time to consider the impact of this matter. This would be placed on the June 12th Agenda.

The motion was voted on and was passed (5-0).

A motion was made by Councilman Willhite, seconded by Vice Mayor Coates, and unanimously passed (5-0) approving the meeting to extend past 11:00 p.m. per the Village's rules.

E. STATUS REPORT FOR EQUESTRIAN VILLAGE COMMERCIAL EQUESTRIAN ARENA COMPATIBILITY DETERMINATION

TABLED – SEE ABOVE MOTION.

8. REGULAR AGENDA

A. APPOINTMENT OF BOARD AND COMMITTEE MEMBERS

Mr. Schofield introduced the Agenda item. Ms. Rodriguez said that Council was provided with an updated listing of names submitted for appointment to the various boards and committees. She said

that they would take the appointments one at a time and where there is a pending appointment, Council could then provide the name if they had someone they wanted to appoint at this time. They would need an appointment for the At-Large appointments.

Ms. Rodriguez read the names of the following appointments:

Architectural Review Board

Ken Jacobson
Robert Camerlinck
George Unger
Kimberly Sundook
Carmen Paterniti

A motion was made by Councilman Willhite, seconded by Vice Mayor Coates, and unanimously passed (5-0) appointing Ron Shamash as an At-Large appointment to the Architectural Review Board.

A motion was made by Councilman Willhite, seconded by Councilman Greene, appointing Frank Pennea as an At-Large appointment to the Architectural Review Board.

Councilwoman Gerwig said that Richard Logan who previously served on the Board, who was an architect. Vice Mayor Coates asked if Mr. Pennea was an architect. Councilman Willhite noted that Ken Jacobsen is an architect who was appointed by Mayor Margolis. He said that staff's recommendation was to have an architect which had been fulfilled.

The motion was voted on and was passed (5-0).

Construction Board

John Whitehead
Damon Robling

Ms. Rodriguez noted that there were three pending appointments, and asked Council if there were any names to be submitted by Council at this time. Council indicated that they did not have any other individual appointments at this time.

A motion was made by Councilman Willhite, seconded by Councilman Greene, and unanimously passed (5-0) appointing Oscar Alvarez as an At-Large appointment to the Construction Board.

A motion was made by Councilman Willhite, seconded by Councilman Greene, and unanimously passed (5-0) appointing William Dunn as an At-large appointment to the Construction Board.

Education Committee

Theresa Ventriglio
Al Paglia
Marcia Hayden
Shauna Hostetler

Kim McPherson

Vice Mayor Coates said that Mr. Paglia was willing to serve as his appointment to the committee, but he questioned whether serving on this Advisory Committee would preclude his position at Halsey & Griffith from soliciting business from the Village. In response, Mr. Kurtz said he thought it was the School Board; but he said that it wouldn't preclude him from doing business because this Committee doesn't have a decision-making authority with respect to any of those items. Vice Mayor Coates said that he was fine with Mr. Paglia serving as his appointment.

Ms. Rodriguez noted that there were no pending applications, but they could take appointments.

A motion was made by Councilman Greene, seconded by Councilman Willhite, and unanimously passed (5-0) appointing Ann Greenspan as an At-Large appointment to the Education Committee.

Councilman Willhite said that Kim McPherson expressed an interest to serve on the Committee although she hadn't submitted an application.

A motion was made by Councilman Willhite, seconded by Councilwoman Gerwig, and unanimously passed (5-0) appointing Kim McPherson as an At-Large appointment to the Education Committee.

Mr. Kurtz asked if Ms. McPherson's appointment was subject to her submitting an application. Councilman Willhite responded affirmatively.

Equestrian Committee

Cynthia Gardner
Myles Tashman
Dr. Kristy Lund
Linda Smith-Faver

Councilwoman Gerwig said that she wanted to withhold naming her appointment at this time. She said that she had a concern about there not being any representation from Polo on the Committee.

A motion was made by Mayor Margolis, seconded by Councilwoman Gerwig, and unanimously passed (5-0) appointing Michael Whitlow as an At-Large appointment to the Equestrian Preserve Committee.

A motion was made by Councilman Green, seconded by Councilman Willhite, and unanimously passed (5-0) appointing Linda Elie as an At-Large appointment to the Equestrian Preserve Committee.

Parks & Recreation Advisory Board

Liz Stockton
Anthony Forgione
Tom Wenham
Dr. Samuel Falzone
Dr. Jeffrey Zipp

A motion was made by Councilman Willhite, seconded by Mayor Margolis, and unanimously passed (5-0) appointing Michael Pignato as an At-Large appointment to the Parks & Recreation Advisory Board

A motion was made by Councilman Willhite, seconded by Councilwoman Gerwig, appointing Nicholas Duffy as an At-Large appointment to the Parks & Recreation Advisory Board.

Vice Mayor Coates said that Bradford O'Brien is a present member of the Board who has requested an appointment. He questioned if there was any reason why he would not be reappointed. Councilman Willhite said that there was no reason except Mr. Duffy had served on another board and was requesting to be moved.

Councilwoman Gerwig said that Dr. Clarke did not respond so it was presumed that she did not want to serve. Ms. Rodriguez said that the names of those people who had not responded had been removed.

The motion was voted on and was unanimously passed (5-0).

Planning, Zoning & Adjustment Board

Craig Bachove
Elizabeth Mariaca
Dr. Marcia Radosevich
Timothy Shields
Carol Coleman

A motion was made by Mayor Margolis, seconded by Councilman Greene, and unanimously passed (5-0) appointing Paul Adams as an At-Large member of the Planning, Zoning & Adjustment Board.

A motion was made by Vice Mayor Coates, seconded by Councilwoman Gerwig, and unanimously passed (5-0) appointing Michael Drahos as an At-Large member of the Planning, Zoning & Adjustment Board.

Public Safety Committee

Jim Lewis
Ernie Zimmerman
Kevin Shaw
Steve Cheatham
Dean Holley

A motion was made by Councilman Willhite, seconded by Councilwoman Gerwig, and unanimously passed (5-0) appointing Jacqueline Hutman as an At Large appointment to the Public Safety Committee.

A motion was made by Councilwoman Gerwig, seconded by Vice Mayor Coates, appointing Joie Talley as an At-Large appointment to the Public Safety Committee.

Councilman Willhite expressed concern about appointing Mr. Talley as he was currently a candidate for Palm Beach County Sheriff. Mr. Kurtz said that Mr. Talley would not be precluded from serving on the Board because he has filed to run; however, if he was elected he would have to resign.

The motion was not voted on. Council consensus was to leave that position open at that time.

Tree Board

Debbie Evans
Kay Brown
Ken Roundtree
Christopher Gillette
Stormi Biven

A motion was made by Mayor Margolis, seconded by Councilman Willhite, and unanimously passed (5-0) appointing Dr. Charles Sandell as an At-Large appointment to the Tree Board.

A motion was made by Councilman Willhite, seconded by Councilwoman Gerwig, and unanimously passed (5-0) appointing Lisa Ferrano as an At-Large appointment to the Tree Board.

An application was received from a resident who wished to serve on an Environmental Advisory Board. Mayor Margolis asked if Ms. Rodriguez could contact that individual and advise them that the Village does not have that Board. Ms. Rodriguez indicated that they would contact him as well as everyone who was not selected thanking them for submitting their applications.

Councilman Greene asked for the status of the Senior Advisory Board. Ms. Rodriguez explained that an advertisement had been placed for the Senior Advisory Committee. The deadline for submitting those applications was May 31, 2012 and applications would be accepted after that date. Mr. Kurtz said that resolution was scheduled to be heard at the June 12, 2012 meeting.

Mayor Margolis questioned when the new boards would be seated. Ms. Rodriguez said that most of those boards and committees will meet in June and would select their Chairperson at that time.

B. RESOLUTION NO. R2012-18 (POLO VILLAGE II PLAT): A RESOLUTION OF WELLINGTON, FLORIDA'S COUNCIL ACCEPTING AND APPROVING THE POLO VILLAGE II PLAT FOR A 96.11 ACRE PARCEL LYING IN SECTION 16, TOWNSHIP 44 SOUTH, RANGE 41 EAST, VILLAGE OF WELLINGTON, PALM BEACH COUNTY, FLORIDA.

Mr. Schofield introduced the Agenda item. He said that absent the master plan approval no action could be taken on the plat. Mr. Kurtz said that was correct. Mr. Kurtz said that was not denied, but that no action could be taken on it and it was removed from the Agenda.

A motion was made by Vice Mayor Coates, seconded by Councilwoman Gerwig and unanimously passed (5-0) removing Resolution No. R2012-18 from the Agenda.

C. REQUEST FOR DIRECTION ON INITIATING A DEVELOPMENT ORDER STATUS REPORT PURSUANT TO COMPLIANCE WITH SEC. 5.1.13 OF THE LAND DEVELOPMENT REGULATIONS

Mr. Schofield introduced the agenda item. He stressed that this was something that Council should and could take public comments on; however, it was not directed to a specific applicant so if they have comments that are directed to a special project, they would be inappropriate at this time. Mr. Schofield said that Council expressed some concerns about the level of information contained in certain development applications and their compliance with Section 5.1.13. He said that staff was seeking direction on the time, means and methods of initiating a Development Order Status Report based on that section. Mr. Schofield then read into the record Section 5.1.13: "if there is evidence that an application for development order was considered wherein there was misrepresentation, fraud, deceit or a deliberate error of omission, the Village shall initiate a re-hearing to reconsider the development order. The Village shall re-approve, approve with new conditions or deny the development order at the re-hearing based on the standards of this article. If evidence of misrepresentation or neglect is discovered during the application review or approval process, the application shall be de-certified and remanded to sufficiency review." Mr. Schofield reiterated that Council has expressed concerns over the levels of information in certain development orders. He said that they were seeking policy direction on whether or not conformance to the omission standards of 5.1.13 was sufficient grounds to initiate a Development Order Status Review under the provisions of Section 5.9; however, he suggested that it was probably not. He said that failing that, they would look to conduct that hearing solely on reliance of the provisions of Section 5.1.13 itself and then look to Section 5.9 as the applicable review standards because they were not contained in Section 5.1.13. Mr. Schofield said the question was if there is an omission of fact, could they and should they initiate that Development Order Review and if they do, would it be Council's direction that it be done under the review provisions of Section 5.9.

Vice Mayor Coates said that he was confused because he thought that this was not generated as a result of a specific application and was just a general discussion that they were having. Mr. Schofield said that there was only one current application in the Village that it applied to which was the approval for the last master plan amendment for Wellington Country Place. He said that he was not prepared to do and what they have not had the opportunity to do is that whenever they hear a zoning matter, there is a notice provision and everyone is given an opportunity to prepare their presentation. He said that most zoning matters require a 15 day advertisement period. He said there is a different standard in 5.9, but 5.1.13 doesn't have that. He said that the legislative requirement for zoning is 15 days. Mr. Schofield further stated that given the lead time for the Post, they would have to have it out 18 days in advance. Mr. Schofield suggested that this be a two-part hearing. He said that if Council chooses to do so, they could do so on a single night. He explained that the first step is the finding of fact that the violation actually exists which is similar to the actions of the Code Enforcement Board where staff presents a violation to the Special Magistrate. He said in that process, the Special Magistrate will give time to correct a violation and solutions; however, he did not know if that was an option in this case. He said that they would first have to do the finding of fact and then hold a hearing where everyone could present their case. Mr. Schofield said that it would be similar to the process that Council had undertaken that evening.

Councilwoman Gerwig said that Mr. Schofield had compared it to the Code Enforcement hearing where staff presents a violation, and questioned whether staff had a violation to present. In response, Mr. Schofield said that what they have is an omission in an application which would be the grounds for bringing the 5.1.13 hearing. He said that Council would then have to make a finding of fact. He said that the hearing is where the applicant, the permittee and any interested party could present any facts or evidence that they wish into the record since it is quasi-judicial and Council would have to make a determination on that violation. He said that they should do one of three things that the code allows: re-approve, re-approve with conditions or revoke.

Mr. Kurtz said that they were looking at a two-step process, the first being whether or not they were actually having a hearing on whether there was a deliberate error on the omission or whether there was misrepresentation, fraud or deceit or whatever it happens to be. With respect to that issue, he believed that the testimony could be extensive. He said that there could be questions of sitting and former Council members as to what they understood, whether or not there was an omission and if things were or were not presented to them.

Mr. Schofield said that Council should schedule this and he did not believe it should be on a regular agenda, but a special meeting with sufficient time to conduct the hearing.

A motion was made by Vice Mayor Coates, seconded by Councilman Greene to proceed under Section 5.1.13 to make a determination whether there was a violation of that provision.

Mr. Kurtz said with respect to the Country Place master plan amendment that was approved on or about October 26, 2011.

Vice Mayor Coates asked if that would give the applicant full opportunity to present its position during that hearing. Mr. Schofield responded affirmatively.

Councilwoman Gerwig asked if they first had to determine if that had happened and then the second part would be to ask the applicant. Mr. Kurtz said that the reason he requested a two-step process was because they first have to determine whether there was a deliberate error of omission, misrepresentation fraud or deceit. He said that if they conduct the re-hearing and if they make the determination that is what they were going to do, that re-hearing process requires a whole series of experts in preparation that are separate and apart from the question on the application itself.

Councilwoman Gerwig said that her understanding at the Agenda Review from Barbara Alderman was that it would be based on the reasonableness of the sitting Council. Mr. Kurtz stated that the sitting Council would make the determination, but what he was suggesting was that since this goes to the issue of what people were told, when they were told and those kinds of things and that some of the former Council may be questioned about that. He said that ex-parte proceedings are usually innocuous events where someone says that they spoke to someone and there wasn't a lot of detail. He said that it would not surprise him if there were more detail with respect to this particular matter when they go into it. He said that he wanted to advise Council of that before it happens.

Vice Mayor Coates believed that the applicant could present their case, but he questioned why they weren't narrowly focusing on what was presented to Council when it sat in the quasi-judicial hearing. He said the fact that one Council member or another may have had conversations and was aware of the fact doesn't obviate the need that all of Council should have been made aware of it. He felt that what was important was what was presented that night. Vice Mayor Coates said that the applicant could make its case, but he didn't think it was relevant that the Mayor or some other Council person was told something prior to the hearing. In response, Mr. Kurtz said that the record that was presented to Council included representations with respect to omission that was presented by an interested party specifically that was included in the agenda packet. He said that it is the subject matter for a Petition for Certiorari that they are currently litigating where that is one of the very specific issues that they raise. He said that they wouldn't be able to raise that issue in the Cert petition if there hadn't been some evidence of it.

Mr. Schofield said that he has the sense of Council that given what he believed his direction was, it would take several days to draft the initial order and it would then have to be advertised. He said that this being May 22nd, it would be early into the next week before the order was drafted. He suggested

that they schedule this to as close to June 15th as possible. Mr. Schofield said that beyond that it would most likely be another 30 days before everyone gets their experts together. He suspected that there would be some discovery in this process. Mr. Kurtz added that there was no mechanism for discovery under Village's rules. Mr. Schofield said that where they would start is with the initial application itself because the code section speaks to the application. He said that beyond that, he will need to spend some time with the planning staff because Mr. Basehart will have another difficult order to draft. Mr. Kurtz did not believe it could get heard by June 15th because notice has to be provided of the initial proceedings.

Councilman Willhite asked if they had to put a specific date on this to start the process as Vice Mayor Coates has made the motion. Mr. Kurtz responded negatively. Mr. Schofield said that he would have a suggested date because it is a publicly advertised process and is quasi-judicial so it has to appear in a local newspaper.

Councilman Willhite asked if the Mayor had to call a special meeting or Council had to agree to a special meeting on this date. Mr. Kurtz said that it would be necessary for all of Council to be present. Mr. Schofield said that they would coordinate the date, but recommended that they allow the Mayor to call a special meeting based on a coordinated date.

Mayor Margolis said that he would do that.

The motion was voted on and was passed (4-1) with Councilwoman Gerwig dissenting.

9. PUBLIC FORUM - NONE

10. ATTORNEY'S REPORT

MR. KURTZ: Mr. Kurtz presented the following report:

- With regard to Pirovano vs. Village of Wellington, Mr. Kurtz announced that a Motion to Dismiss was scheduled for mid-July. He said that he wanted to apprise Council of the status of that case and suggested that be done at an Attorney/Client session on Monday, June 25, 2012 after the Agenda Review Meeting at 5:00 p.m. Council indicated that they would be available.
- Mr. Kurtz announced that he would be on vacation the following week; however, members of his office would be on site to cover for him.

11. MANAGER'S REPORT & UPDATES

MR. SCHOFIELD: Mr. Schofield presented the following report:

- The next Regular Council Meeting was scheduled for Tuesday, June 12, 2012 at 7:00 p.m. in the Council Chambers.
- Village Offices would be closed on Monday, May 28, 2012 in observance of the Memorial Day holiday.
- Wellington's Memorial Day Parade and Ceremony was scheduled for Monday, May 28, 2012 beginning with the Parade starting in front of the Wellington Community Center at 8:15 a.m. followed by the ceremony at Veterans Memorial at 8:30 a.m. The event would begin 30 minutes earlier this year to allow people with the opportunity to attend multiple events on that day.

- A Budget Workshop to discuss the Capital Improvement Plan was scheduled for May 29th at 3:00 p.m. in Conference Rooms 1E/1F.
- Mr. Schofield announced that he would be out of town that weekend and apologized for missing the Memorial Day activity because of family obligations.
- He, Ms. Ramaglia and Mr. Barnes would be attending the City and County Manager's Association the following Wednesday afternoon and Thursday.

Mayor Margolis indicated that he might not be available for the May 29th Budget Workshop. Mr. Schofield said that he would have Ms. Adler check and, if necessary, the workshop would be rescheduled.

12. COUNCIL REPORTS

COUNCILMAN GREENE: Councilman Greene presented the following report:

- Councilman Greene extended his congratulations to the graduates of Wellington High School who had their graduation the previous day as well as the graduates of Palm Beach Central High School whose graduation was scheduled for the next day. Councilman Greene also congratulated his son Mitchell who would be graduating and would be attending the University of Central Florida in the fall.
- A ceremony was held that day for the groundbreaking at the Boys and Girls Club for the new facility being built in Wellington. He thanked Mr. Neil Hirsch, one of the major donors, for his very generous contribution as well as other families and contributors throughout the community.
- Free movie night was scheduled for June 1st, a Wellington Firefest would be held on June 2nd at Wellington Regional Medical Center, a Summer Health and Wellness Festival was scheduled for June 9th at the Whole Foods Plaza, and there would be a Free Concert on June 9th at the Amphitheatre featuring a Tribute to the Eagles.

COUNCILMAN WILLHITE: Councilman Willhite presented the following report:

- Councilman Willhite noted that the Firefest would be held at Village Park from 11:00 a.m. to 2:00 p.m., and that it was sponsored by Wellington Regional Medical Center. This event has been held in multiple areas around the County and was very successful.
- He concurred with Councilman Greene about the ceremony held that day at the Boys and Girls Club. He thought that it would be a great project to benefit the children and young people of the Village.
- The events at the Amphitheatre have been well publicized and attended.
- Councilman Willhite announced that for the second time he was an escort for a group called "Honor Flight" which is a group of World War II Veterans to Washington D.C. He said that it was a great honor for him to be able to accompany them.
- The American Legion Post held an Open House for veterans at the Wellington Community Center the previous evening which was well-attended. The Veterans from the Purple Heart Brigade recognized Chris Riker's wife. Chris Riker was a Broward County Deputy and Wellington resident who was killed in the line of duty. He also noted that the American Legion Post had been named after him.
- He invited everyone to attend a Veterans Day event either at the Village or others around the County. Councilman Willhite asked everyone to thank those veterans who have served their country and community.

COUNCILWOMAN GERWIG: Councilwoman Gerwig presented the following report:

- SHE ANNOUNCED that on Sunday, June 10th on ABC at 9:00 p.m., her friend Jackie will be participating in the Extreme Makeover Weight Loss edition. Councilwoman Gerwig said that she is a local woman who has faced a lot of adversity.
- Councilwoman Gerwig said that she would not be available for the Memorial Day Services as she would be out of town.
- She also echoed Council comments about the Boys & Girls Club. She also recognized and thanked Victoria McCullough who has offered \$200,000 towards the Club.
- With regard to the equestrian issues, she said that it was called a "scorched earth issue and that both sides were called "scorched earth styles" which she vehemently disagreed with. She believed that one side has taken a scorched plan while the other has made an attempt to meet the other half way, and apologized if her comments offended anyone. Councilwoman Gerwig believed that everyone needed to work together and that divisiveness was never good for the community.

VICE MAYOR COATES: Vice Mayor Coates presented the following report:

- Vice Mayor Coates said that the decisions that Council has to make are very difficult. He said to Councilman Greene that his remarks were not meant to be personally offensive. He said that he knew Councilman Greene's political position as well as that of Mayor Margolis and Councilman Willhite, and he was only trying to convey that they have to be careful when the decisions take that political shift that they occasionally do. He said that he respected every Councilmember's opinion on every subject and their right to give that opinion. Vice Mayor Coates further stated that he has never questioned the motives behind anyone's decision on Council because he felt everyone makes a decision based on what they believe to be in the best interest of all of Wellington. He said that there would be many disputes as to what was in the best interest of Wellington. Vice Mayor Coates said that this was an issue that they can agree to disagree on at this time; but things may change and they may be in agreement at some point in time on this. He felt that they have to remain civil on Council because he did not believe it served the residents well or set a good example of leadership if they were fighting against each other to do what is best for Wellington.
- He announced that he would be out of town with his son at a baseball tournament and would be unable to attend the Memorial Day ceremony. He congratulated his son Colton who would be graduating from Glades Day and would then be attending school in Tallahassee.

MAYOR MARGOLIS: Mayor Margolis presented the following report:

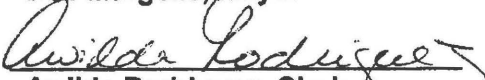
- Mayor Margolis announced that he had attended the Relay for Life event on Saturday. He said that he made a promise that Wellington would have two teams participating in the event the next year noting that Wellington did not have a team this year.

13. ADJOURNMENT

There being no further business to come before Council, the meeting was adjourned at 11:30 p.m.

Approved:


Bob Margolis, Mayor


Awilda Rodriguez, Clerk



A GREAT HOMETOWN

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

Manager
Paul Schofield

April 30, 2012

Mark Bellissimo, Managing Partner
Far Niente Stables, LLC
Polo Field One, LLC
Stadium North, LLC
Stadium South, LLC
14440 Pierson Road
Wellington, FL 33414

Peter M. Brant, President
White Birch Farms, Inc.
80 Field Point Road
Greenwich, Ct 06830

Glenn F. Straub, President
Palm Beach Polo, Inc.
11890 Polo Club Road
Wellington, FL 33414

SUBJECT: WELLINGTON PUD MASTER PLAN AMENDMENT (aka: EQUESTRIAN VILLAGE MASTER PLAN AMENDMENT), VILLAGE OF WELLINGTON RESOLUTION NO. R2012-07~ FAILURE TO COMPLY WITH TIME CERTAIN APPROVAL CONDITIONS.

Gentlemen:

This letter is to notify you that your failure to comply with time certain conditions of approval contained in the above referenced Resolution has resulted in the need to present the project to the Village Council for Status Review, consistent with the provision of Sec. 5.9.3.D. of the Wellington Land Development Regulations. Specifically, Condition #7 of Resolution R2012-07 which requires that the proposed plat of the overall 96.3 acre property shall be recorded by April 1, 2012 has not been met.

This matter will be placed on the Village Council agenda scheduled for May 22, 2012. The Village Council has the discretion to grant an extension of time to comply, modify or eliminate the approval condition, or to rescind the project approval. You and/or your representative(s) will have the opportunity to provide testimony. Staff intends to recommend approval of an extension of 90 days to complete the aforementioned platting requirement.

Further, please be advised that in accordance with the provisions of Sec. 5.9.3.A.1, the ability to obtain new development orders on the subject property has been suspended until this Status issue has been resolved.

Mark Bellissimo
Wellington PUD Master Plan Amendment
R2012-07
April 30, 2012
Page 2.

Please do not hesitate to contact me if you have any questions relative to this matter.

Very truly yours,



Robert E. Basehart, AICP
Growth Management Director

Cc: Paul Schofield, Village Manager
Jeff Kurtz, Village Attorney
David Flinchum, Planning & Zoning Manager
Jacek Tomasik, Building Official



PROJECT DESCRIPTION

Petition Number: 2011-033 MPA1 (Status Report)

Original Resolution: R2012-07, Adopted on February 1, 2012

Project Name: Wellington Planned Unit Development Master Plan Amendment Tract 30C Equestrian Village

Original Applicant: Equestrian Sports Partners, LLC

Owners: Far Niente Stables II, LLC
Polo Field One, LLC
Stadium North, LLC
Stadium South, LLC
Mark Bellissimo, Managing Partner
14440 Pierson Road
Wellington, Florida 33414

Palm Beach Polo, Inc.
Glen F. Straub, President
11199 Polo Club Road
Wellington, Florida 33414

White Birch Farm, Inc.
Peter M. Brant, President
80 Field Point Road
Greenwich, CT. 06830

Location: Northeast corner of Pierson Road and South Shore Boulevard and. (Exhibit A)

PCNs: 73-41-44-16-00-000-5020, 5030, 5040, 5050, 5060 and 5070

Acres: 96.3 acres

Original Approval: Amendments to the Wellington Planned Unit Development (PUD) Master Plan for Tract 30C, as follows:

- Changing the designation of an approximate 96.3 acre portion of Tract 30C consisting of Tract 30C-2 (16.5 acres), Tract 30C-3 (43.0 acres) and Tract 30C-4 (36.8 acres) from their previous Tennis and Polo Facility designation to Commercial Recreation/Commercial Equestrian Arena (Tracts 30C-2 and 30C-3) and Commercial Recreation/Polo Facility (Tract 30C-4).

- Add three (3) access points to Tract 30C -- Two (2) access points on the north side of Pierson Road and a new access point on the east side of South Shore Boulevard.

Background

The Master Plan Amendment approved on February 1, 2012, under Resolution R2012-07 (Exhibit B) was a necessary prerequisite to approval of the Compatibility Determination for the proposed Commercial Equestrian Arena project approved at the same meeting, on February 2, 2012. It is also a necessary prerequisite to the consideration of the pending plat for property.

The Master Plan approval was subject to seven conditions, including condition number seven (7) that required a plat for the 96.3 acre property be recorded by April 1, 2012. At the February 28, 2012 Council meeting the Village Council refused to approve the proposed plat for the 96.3 acre parcel, as the plat approval was the subject of several conditions. (Copy of minutes of February 28th meeting are attached.) (Exhibit C) The approval of the plat was tabled to the March 13, 2012 meeting, however to date the property owners have not submitted an executed copy of the plat mylar with all of the requisite owner and mortgagee signatures. Therefore, the plat not been placed back on Council agenda for final approval. In the interim the then existing title questions have been resolved to the satisfaction of the Village Attorney and the POA documents have been approved for recordation. The site plan on which the plat is based has been approved by the DRC.

The property owners did not request an extension of time in order to comply with the platting condition, prior to April 1st. Pursuant to Section 5.9.1.E of Wellington's Land Development Regulations (LDR) the property owner is responsible for timely compliance with any condition of development approval. In the absence of compliance and the absence of a timely filed request for extension of time, suspension of the development order is appropriate in accordance with Section 5.9.3 of the LDR. A copy of the suspension order, to be recorded in the official records of Palm Beach County, is attached. (Exhibit D) In order to address the situation and give the owner the opportunity to make a presentation to Council, a review of the matter and public hearing has been scheduled for Council's consideration at their May 22, 2012, meeting.

Site History

In 1972, the Wellington Planned Unit Development (PUD) was originally approved by Palm Beach County. The PUD consists of 7,562 acres and currently has an approval for 14,648 dwelling units with an overall density of 2.0 dwelling per acre. The property was originally the center of the Polo industry started by Mr. Ylvisaker back in the 1970's. The site consisted of the original Polo Stadium with four polo fields with Fields 1 & 2 west of Polo Island and Fields 3 & 4 east of Polo Island. In the early days, the polo fields were frequently used for matches and several recreational community events. After Wellington's Incorporation, polo activity was limited and in 2007 the original Polo Stadium was demolished. Polo is now being played competitively at the new International Polo Club on the west side of 120th Avenue. In recent years Fields 1 & 2 have been used for Steeplechase competition. In 2011-12 pursuant to a special use permit the site was utilized for dressage events and stabling.

On December 31, 1995, Wellington was incorporated and on January 19, 1999 Wellington's Comprehensive Plan was adopted. The Comprehensive Plan included an Equestrian Element which required Wellington to create an Equestrian Preserve Area boundary. The property is in the Equestrian Preserve Area. In May of 2005 the property designated as 30C-4 containing

approximately 36.8 acres was acquired by White Birch Farm, Inc.. Between June 2006 and October 2007 according to the Palm Beach County Public Records Warranty Deeds for Tract 30C-2 and 30C-3 properties were sold to Far Niente Stables II, Polo Field One, LLC, Stadium North, LLC and Stadium South, LLC which are all managed by Equestrian Sports Partners, LLC. Until April 30, 2012, Palm Beach Polo, Inc. maintained ownership of the Cell Tower site.

All the property owners joined together to request a special use permit for a dressage facility for the 2011-12 equestrian season. In addition the property owners joined together to request approval for the construction of barns, equestrian rings, and a covered equestrian arena. Those structures were permitted but the certificates of completion/occupancy were subject to the platting of the property and the submittal and approval of a landscaping plan for the western portion of the property. While certificates were inadvertently granted for some of the structures, they have been revoked subject to those same original conditions. The platting of the property is necessary for the structures to be granted final certificates of occupancy/completion.

Current Request:

The staff suspended the current Master Plan approval and initiated this request is for a "Status Report" and Council action consistent with the provisions of Sec. 5.9.3.D of the Land Development Requirements. This Code provision provides a required review and decision making process for applications that are in violation of conditions of approval that impose time-certain requirements for implementation. Resolution R2012-07 which approved Petition No. 2011-033 MPA1 contained seven conditions of approval, three of which contained time limits for implementation. Currently, Condition #7, which requires that the entire 96.3 acre property shall be platted prior to April 1, 2012, is in default. The two other Conditions with time certain deadlines that have not yet defaulted require that significant bridle path improvements with appropriate driveway crossings and that signalized horse crossings with advance pavement markings and signage be installed at the Pierson Road/South Shore Blvd and the Pierson Road/Southfields Road intersections prior to November 1, 2012. (A copy of section 5.9 of the LDR is attached) (Exhibit E)

Options:

Council must hold a public hearing and take one of the following alternative actions:

- Grant an extension of time to comply with the approval Condition in question.
- Modify or eliminate the Condition in question.
- Rescind the entire project approval for failure to comply.
- Refer the matter to the Equestrian Preserve Committee and/or the Planning, Zoning & Adjustment Board for a recommendation.

Staff Analysis:

Sections 5.9.3.D.2 and 5.9.3.E.2 of the Land Development Requirements provide the criteria for the findings that must be considered for decision(s) on Status Review cases. Those criteria are:

- *The original development order remains consistent with the Village Comprehensive Plan:* There have been no changes to the Comprehensive Plan that would affect the subject property since the approval resolution was adopted. Therefore, the approval granted on February 1, 2012 remains consistent.

- *The original development order remains consistent with the Land Development Regulations:* There have been no changes to the LDR that would affect the subject property since the approval resolution was adopted. Therefore, the approval granted on February 1, 2012 remains consistent.
- *The original development order remains in compliance with the Countywide Traffic Performance Standards:* The approval granted on February 1, 2012 remains consistent.
- *Attempts by the applicant to complete the unfulfilled condition:* The applicant has attempted to complete the platting requirement. An approved DRC Subdivision Plan has been submitted and approved, Preliminary Plat approval has been obtained and the matter was placed on agendas of the Village Council for Final Plat approval. However, the applicant has not been able to obtain final approval because of his inability to obtain the signature of one of the involved property owners on the Plat's mylar. On February 28, 2012 the approval of the Final Plat was on the Village Council agenda and staff offered the option of Council approving same with a condition that it not be recorded until the final signature is obtained, but that option was declined by Council. The applicant, on May 3, 2012, submitted a revised plat document that reflects the transfer of the telecommunications tower site from Palm Beach Polo Inc., to Polo Field One, LLC, and reflects the site as an easement rather than a separate lot. If the plat is approved, as now submitted, the condition of the Commercial Equestrian Arena compatibility determination requiring a variance for the location of the covered equestrian arena would be eliminated. The transfer also eliminates the need to secure Palm Beach Polo, Inc.'s signature on the plat as an owner and through a contemporaneous transaction Palm Beach Polo, Inc.'s mortgage interest in the property was satisfied, eliminating the need for their signature on the plat as a mortgagee. The transactions which simplify ownership of the property took place on or about April 30, 2012.
- *Reliance by other parties on the timely performance of activity:* The Plat requirement does not impact any other parties.
- *Any changed circumstances which may have interfered with the ability of the property owner to meet the time certain requirement:* Ownership issues addressed above.
- *Actions by other parties that may have precluded compliance:* The party causing the inability to comply was one of the applicants, so the reason for the delay is internally created.
- *The existence of extraordinary mitigating factors:* None known.
- *Compliance with the review criteria in subsection 11.4.3.E criteria 1-5, above, for posting of performance surety for a conditional certificate of concurrency reservation:* Not applicable.

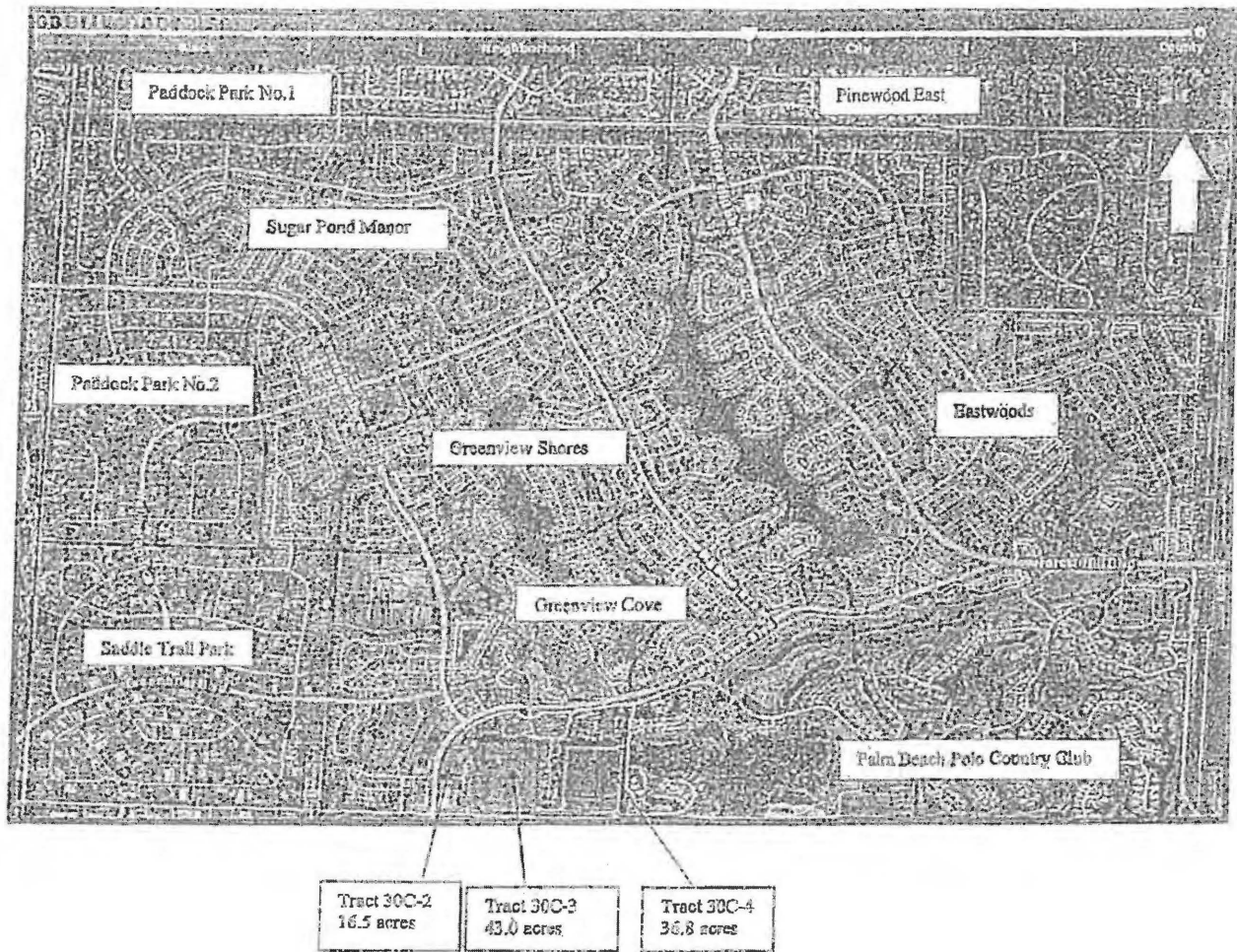
Notification:

The property owner was notified of this review and given a copy of the staff recommendation in a certified mail package. Further, a Notice of Intent to Suspend Development Orders was recorded. A Notice of Hearing was published in the Palm Beach Post on May 10, 2012.

Staff recommendation

Having a plat recorded for this property has been a long standing objective as the plat is the cure for the illegal subdivision that took place in relationship to the property. The lack of a plat to reflect the current ownership of the property has precluded separate development of the lots and the development of the eastern 36 acres as a farm. The plat will also allow the certificates of occupancy/completion to be reissued, for the permitted structures on the site, subject to the approval and compliance with a landscape plan for the western portion of the property. Based on the review criteria provided in Sections 5.9.3.D.2 and 5.9.3.E.2 of the Wellington Land Development Regulations Staff recommends approval of an extension for the deadline to record a plat of the 96.3 acre property approved under Resolution R2012-07 to September 1, 2012.

Exhibit A
Location Map



30C

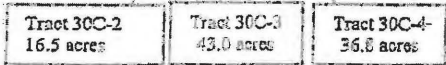


Exhibit B

RESOLUTION NO. R2012-07

A RESOLUTION OF WELLINGTON, FLORIDA'S COUNCIL APPROVING THE MASTER PLAN AMENDMENT PETITION NUMBER 2011-033 MPA1, ALSO KNOWN AS EQUESTRIAN VILLAGE MASTER PLAN AMENDMENT TO MODIFY THE WELLINGTON PLANNED UNIT DEVELOPMENT FOR AN APPROXIMATE 96.3 ACRE PORTION OF TRACT 30C TO INDICATE TRACT 30C-2 AS 16.5 ACRES, TRACT 30C-3 AS 43.6 ACRES AND TRACT 30C-4 AS 36.6 ACRES, CHANGING THE DESIGNATION OF THE THREE TRACTS FROM POLO AND TENNIS FACILITY TO COMMERCIAL RECREATION/COMMERCIAL EQUESTRIAN ARENA (TRACTS 30C-2 AND 30C-3) AND COMMERCIAL RECREATION/POLO FACILITY (TRACT 30C-4), ADD TWO ACCESS POINTS ON THE NORTH SIDE OF PIERSON ROAD AND A NEW ACCESS POINT ON THE EAST SIDE OF SOUTH SHORE BOULEVARD FOR PROPERTY LOCATED AT THE NORTHEAST CORNER OF PIERSON ROAD AND SOUTH SHORE BOULEVARD; PROVIDING A CONFLICTS CLAUSE; PROVIDING A REPEALER CLAUSE; PROVIDING A SAVINGS CLAUSE AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Wellington's Council, as the governing body of Wellington, Florida, pursuant to the authority in Chapter 163 and Chapter 165, Florida Statutes, and the Wellington Land Development Regulations are authorized and empowered to consider petitions related to zoning and development orders; and

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

WHEREAS, the Master Plan Amendment was reviewed and certified by the Development Review Committee as of November 26, 2011; and

WHEREAS, the Master Plan Amendment was reviewed and recommended for approval 4-0 by the Equestrian Preserve Committee on December 14, 2011; and

WHEREAS, the Master Plan Amendment was reviewed and recommended for approval 6-1 by the Planning, Zoning and Adjustment Board on January 4, 2012; and

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

WHEREAS, the Wellington's Council has made the following findings of fact:

1. The Master Plan Amendment is consistent with the Comprehensive Plan;
2. The subject request is consistent with the stated purposes and intent of the Land Development Regulations;

3. The requested Master Plan Amendment is consistent with the surrounding land uses and zoning districts;
4. The requested Master Plan Amendment requires an amendment to the Planned Unit Development Master Plan;
5. No adverse impacts to the natural environment are expected to occur as a result of the approval of the request;
6. The requested Master Plan Amendment would result in a logical and orderly development pattern;
7. The requested Master Plan Amendment is consistent with the applicable Equestrian Overlay Zoning District neighborhood plan; and
8. The requested Master Plan Amendment complies with Article 11, Adequate Public Facilities.

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

SECTION 1. The foregoing recitals are hereby affirmed and ratified. The Equestrian Village Wellington Planned Unit Development Master Plan Amendment, is hereby **APPROVED** as described in Exhibit "A", subject to the conditions of approval contained herein, which are in addition to the general requirements otherwise provided by this resolution.

- 1) This approval is based on Master Plan date stamped December 1, 2011.
- 2) All previous conditions to the Wellington PUD not specifically amended by this request are still in effect.
- 3) The proposed northern South Shore Boulevard driveway to Parcel 30C-2N shall not be constructed until the driveway to Parcel 30C-1 is closed. In the event of the driveway closure on Parcel C-1, the owner of C-2 shall be required to grant a cross access easement to C-1, allowing C-1 traffic access to the new driveway on C-2, should the owner of C-1 want such access. Until such time as the new driveway on C-2 is constructed, the applicant shall present an acceptable alternate on site traffic flow pattern to Village staff, which shall be subject to Development Review Committee approval at the time of final site plan approval.
- 4) A minimum 15 feet wide bridle path with appropriate crossings at the project driveways shall be regraded and provided on the north side of Pierson Road for approximately 3,200 feet from South Shore Boulevard to the horse crossing on Pierson Road at Southfields Road. Construction shall be completed prior to November 1, 2012. **(TRAFFIC)**
- 5) Signalized horse crossings with advance pavement markings and signage shall be provided at Pierson Road and South Shore Boulevard intersection and on

Pierson Road at the Southfields Road intersection. Construction shall be completed prior to November 1, 2012. (TRAFFIC)

- 6) The bridge path in Condition 4 shall be installed in accordance with Wellington standards as approved by the City Engineer.
- 7) The proposed plat of the 96.3 acre property shall be recorded prior to April 1, 2012.

SECTION 2. This Resolution shall become effective immediately upon adoption.


PASSED AND ADOPTED this 1st day of February, 2012.

RENDERED the 15th day of February, 2012.


ATTEST:

WELLINGTON, FLORIDA

BY:


Awilda Rodriguez, Clerk

BY:


Darrell Bowen, Mayor

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:**

BY:


Jeffrey S. Kurtz, Attorney

**Exhibit C
Excerpts of
February 28, 2012
Wellington Council Minutes**

then given to Wellington which automatically gets applied to the insurance policies. Mr. Schofield noted that the only hit that the Building Department took in the last ISO rating was due to the failure to adopt the current version of the Building Code which could not have been done since the legislature had not done so.

Vice Mayor Willhite asked if Wellington could possibly produce a small segment for Channel 18 or the web page to ensure that residents are made aware that they can contact their insurance company about Wellington's rating. Mr. Schofield said that could be done.

Mr. Tomasik also advised Council that this is basically a new document. He explained that the State of Florida adopts the Florida Building Code 2010 on March 15, 2012, and every municipality is required to adopt this Code. He noted that there are several improvements explaining that the Code that was in front of Council is a connection of Wellington's existing Code that they have been enforcing since 2008. He explained the Building Code includes all suggestions from all building officials of Florida who developed a document that is universal as well as the Building Code Advisory Board of Palm Beach County. He explained that this document was also presented to the Construction Board of Wellington and includes all of the new amendments and additions that are required by the State. Mr. Tomasik further explained that this document adds the flood requirements for the municipality, adjustments and regulates more of an energy code which is part of the Florida Building Code, the accessibility also has several codes which becomes a separate volume of the Building Code beginning on March 15th, and it adjusts the wind loads and wind resistance for all of the buildings that will be permitted beginning March 15th of this year. He explained that adopting this on March 15th also provides Wellington with the opportunity to modify Chapter One which is being geared towards specific Wellington needs.

Councilwoman Gervig asked what was different about this Code. In response, Mr. Tomasik said that the majority of what it focuses on is that it allows Wellington to be a customer-friendly enforcer of the Code which applies to the extension of the building permits, renewal of the building permits that expire for several reasons, and allows the Building Department to work with the customer to their bring construction site to compliance without unnecessary penalties or situations where they may conflict with the Building Code.

A motion was made by Mayor pro tem Priore, seconded by Councilman Coates, and unanimously passed (5-0) approving Ordinance No. 2012-08 on First Reading as presented.

~~C. RESOLUTION NO. 2012-15 (ADDENDUM TO FLORIDA ATLANTIC UNIVERSITY AGREEMENT); A RESOLUTION OF WELLINGTON, FLORIDA'S COUNCIL AUTHORIZING THE MAYOR AND CLERK TO EXECUTE AN ADDENDUM TO AN AGREEMENT BETWEEN WELLINGTON AND FLORIDA ATLANTIC UNIVERSITY, AND PROVIDING AN EFFECTIVE DATE, REMOVED FROM THE AGENDA.~~

C. RESOLUTION NO. R2012-18 (PCLO VILLAGE II PLAT): A RESOLUTION OF WELLINGTON, FLORIDA'S COUNCIL ACCEPTING AND APPROVING THE PCLO VILLAGE II PLAT FOR A 98.11 ACRE PARCEL LYING IN SECTION 16, TOWNSHIP 44 SOUTH, RANGE 41 EAST, VILLAGE OF WELLINGTON, PALM BEACH COUNTY, FLORIDA.

Mr. Schofield introduced the agenda item. Ms. Rodriguez read the resolution title. Mr. Schofield explained that this was a plat that establishes two parcels and does not confer additional development rights, and does not impact permitting noting that the permits for the bams and dressage rings had already been permitted under the existing zone. He further explained that this also has no impact on

the Comprehensive Plan Amendment that was submitted to the Department of Economic Opportunity for review which has not yet been returned from the State which will require one more public hearing for the Comprehensive Plan Amendment, two hearings for any associated zoning text amendments and a separate hearing for the Master Plan and other uses. Mr. Schofield anticipated that process will take a minimum of four more months and then there will be three public hearings. He noted that Mr. Bill Riebe, Village Engineer, was present to address any questions.

Mr. Kurtz added that the parcel has within it a limited access easement. He said that the access points into the property will be identified through further driveway permits to the extent that those permits do not already exist. He said that they were suggesting that the approval of the plat be conditioned upon the applicant supplying him with a copy of the Equestrian Village Property Owners Association documents, and that he then finds them to be in compliance with Wellington's Code. He further stated that there is one title issue that they have to clarify noting that there is a reference to a deed by C. Oliver Wellington from the Acme Improvement District. Mr. Kurtz said that in conversations with the attorney who is doing the title work, they indicated that is not an encumbrance on the property and should not be reflected on the plat. He said that they will be sending Wellington confirmation of that.

With regard to the conditions, Vice Mayor Willhite felt that Council was being asked to approve something that Mr. Kurtz had not yet approved. Mr. Kurtz responded stating that he had been supplied with the Property Owners Association documents to review. He said that he still has the question about the title. In light of that, Vice Mayor Willhite asked Mr. Kurtz if he had a question or concern about Council approving this plat. Mr. Kurtz explained that the Property Owners Association documents should not be very complex and he did not anticipate any problems with them. With respect to the title work, he explained that it was only a matter of the title work being supplied to him which would result in the removal of the C. Oliver Wellington deed from the plat. Mr. Kurtz further stated that he was comfortable reviewing those items and Council conditioning the final plat approval and recording of the plat on those items being satisfactory. He said if the result was that they were unsatisfactory and they were unable to resolve those issues, then they would bring it back to Council.

Vice Mayor Willhite asked if the plat would not be signed by anyone until Mr. Kurtz has approved those items in question. Mr. Kurtz responded affirmatively.

Vice Mayor Willhite asked if what was included in the agenda was only back-up information since he had raised some concerns when this issue was previously discussed. He questioned whether putting stipulations on it for entry ways and where roadways could go was part of the approval of this plat. Mr. Kurtz explained that the plat has to conform with the master plan which is why it was included. He said that staff reviewed the plat and believed that it complied with the master plan requirements.

Mayor pro tem Priore asked if the ingress and egress of the master plan coincided with the Polo Village Plat. Mr. Bill Riebe, Village Engineer, said that it would once the plat was approved and recorded. He said that the petitioners could then come in and apply for a driveway permit which will be issued pursuant to the guidelines in the master plan.

Vice Mayor Willhite questioned why this was named Polo Village II and asked where was Polo Village I. In response, Mr. Riebe explained that the Agenda Summary noted that this has been known as World Dressage as well as Equestrian Village; however, Polo Village II is the name that the petitioner wanted to use for this particular plat. He stated that Mr. Michael Sexton, Agent for the applicant, was present and might be able to better address this. Mr. Kurtz added that when plats are being named, they want to avoid names that have already been used so the names are wide open to the applicant.

Mr. Michael Sexton, Sexton Engineering representing the applicant of the plat, explained that the property to the north of Equestrian Village is Parcel A of Equestrian Polo Village and Complex of Palm Beach Polo and Country Club of Wellington. He explained that the name of this plat was determined a number of years ago with the White Birch property so the Polo Village II is just giving some continuity to the adjoining plat. He also noted that it includes a portion that was approved as the Commercial Equestrian Arena and the eastern portion is not part of Equestrian Village which is why they did not want to name it Equestrian Village since this is a 100 acre plat and the Equestrian Village is only 59.5 acres.

Public Comments

1. Amy Huber, 46 SW 1st Street, Miami, FL 33130, representing Charles and Kimberly Jacobs and Solar Sportsystems Inc., addressed Council. She said that she wanted to include the engineering, building and planning files for this property as part of the record. In addition, she wanted to include and incorporate all of their previous objections specifically related to Resolution No. R2012-07 and R2012-08 as well as the allegations contained in the companion complaint on those actions and the actions related to this property. Ms. Huber stated that a plat is a development order that can be challenged just as any other development order that was recognized in a Fourth DCA Case: *Graves v. Pompano Beach* which has similar factual standing as this property. In addition, she noted that the Florida Supreme Court recognized that the purpose of the plat act was to promote community planning. She further noted that Wellington's Code under Article 8 also recognizes that plats aid in the coordination of land development. Ms. Huber said that because the plat was in furtherance of development that they argued and alleged was inconsistent not only with Wellington's Comprehensive Plan, but also violated the Land Development Regulations, she felt that this plat was also inconsistent with the Comprehensive Plan and violated the Land Development Regulations and was void as a matter of law. She also felt the plat lacked adequate data and analysis and there were significant traffic and stormwater issues that had not yet been evaluated or addressed. She noted that Section 8.3.4 also reviews conformity with land use, density and concurrency regulations which they previously objected to and which they felt this application failed to address. Section 8.3.6 requires a site suitability analysis to take place which the record was void of. Ms. Huber was of the opinion that the plat could not be approved as a matter of law and requested denial of the application.
2. Carol Coleman, 14224 Stroller Way. Ms. Coleman believed that they were trying to rush something through that lacked all of the elements. She said that although Mr. Kurtz indicated that those would not be challenged, she questioned why they were rushing to get this approved at this time when they lacked all of the parts. She asked if it was something that had to be done within a certain period and if that was the case, she questioned why. Ms. Coleman thought it would be an easier process to wait until they have all of the pieces before voting on it. Secondly, she said that in the master plan, they had removed the word Polo and questioned why they were requesting it to be called Polo Village II. She thought that the whole purpose was to remove polo and now it was being put back in.

Vice Mayor Willhite asked when they were going to separate these two pieces of properties from the 59 acres since there are two different owners. Mr. Kurtz explained that the plat is the instrument that does that. Vice Mayor Willhite then asked what the two different names would be. Mr. Kurtz said that they would be Parcel I and Parcel II of Polo Village.

Vice Mayor Willhite questioned the infrastructure that had been included and asked if any development on this property would then accept the water management. Mr. Riels explained that any existing water management on the property that circumscribes Polo Island tract is part and parcel of the overall development which includes the sewage as part of the plat. He said that the stormwater

management system that had been put in place was designed to accommodate the development of both of the parcels. Mr. Riebe noted that they have obtained all of the permits that were needed from the South Florida Water Management District to ensure that the stormwater management system remains intact and provides the level of service that was required.

Councilwoman Gerwig said that there appeared to be a new dedication for the water management easement and maintenance around the water, and asked if there had been plans when that was initially done. She said it appeared that there was no underlining easement for this. Mr. Riebe said that the master stormwater management system was part of the overall Polo development. He said that this platting codified it. Councilwoman Gerwig asked if it was Wellington's obligation to know the history of this. Mr. Riebe said that they do know that the master stormwater system that is in place serves the properties. Councilwoman Gerwig said that it doesn't appear that any dedications were made. Mr. Riebe said that was correct. Councilwoman Gerwig asked if they would be getting additional information on that.

Mr. Schofield explained that the original permitting for the master water management system was done in the early 70's. He further explained that there was a modification to the master permit for the then Wellington PUD where Acme Improvement District accepted the maintenance for the lakes in that area which was done by Bink Glisson in 1978. Mr. Schofield said that through time, Wellington has taken those facilities that are purely private like this one and requires the underlying property owners to maintain the systems that benefit only them. He said that the original system was permitted, it had a maintenance entity which in many cases was Acme and Acme has no access to these. He reiterated that as these areas are platted and are done, they are then sent back to the underlying property owner who is the sole beneficiary of them. Mr. Schofield said that this lake did not provide a general benefit to Wellington residents as a whole and was not part of the system that they get credit for, but is the responsibility of the underlying property owner.

Mayor Bowen asked if it was common for Council to approve this plat with two outstanding issues that had been highlighted by Mr. Kurtz. He questioned why they hadn't been resolved as it appeared that neither issue was complicated. In response, Mr. Kurtz said that it was his understanding that the Property Owners Association documents do not have a final signoff at this point in time.

Mayor pro tem Priore questioned if the receipt of the Property Owners Association documents was critical to this resolution and were they legally required for this resolution to be approved. Mr. Kurtz said that it is required that an entity be in place that would be able to accept the dedications. He said that he was comfortable with Council approving the plat subject to the condition that those documents are submitted and they are found to be adequate after a review. With regard to how common it is to approve plats that do not have all of the elements presented at the time of approval, Mr. Kurtz said that over the last eight years, approximately 25% or 30% had some sort of condition associated with them that were not able to be signed off on that particular night.

Councilman Coates questioned whether those cases were because something had been determined the night they were being approved because he did not recall a situation where Council was presented with a plat that didn't have Mr. Kurtz' approval. He asked Mr. Kurtz what was Council's role with regard to the approval of plats. He said that it was his understanding that if Mr. Kurtz and staff deemed the plat to meet Wellington's regulations, Council did not have much of a role except to accept their recommendation and then to approve. In response, Mr. Kurtz said that Council always has the ability to question staff and sometimes they do point out things staff has not thought of. He said that for everyone the approval of a plat is a ministerial function and it is whether or not it meets the requirements of the code.

Councilman Coates said that he personally did not have a problem with the approval of the plat which he felt was consistent with what was decided; however, he wanted to ensure that everything with respect to this particular project proceeded in accordance with how Wellington has historically conducted business. He felt if they were doing something unusual or expediting the timing in a fashion that wasn't done for other applicants or plats, he wanted to know that. He said it appeared to him that perhaps they were doing that and putting it on a faster track. Councilman Coates thought that Mr. Kurtz would normally require all of the documents prior to it coming to Council. Councilman Coates questioned item No. 1 Compliance with Wellington Land Development Regulations. Mr. Kurtz explained that was a catch-all provision that Mr. Riebo has been including in the most recent plat approvals.

Councilwoman Gervig asked if the water management area benefited Polo Island specifically the existing canal system that creates an island. Mr. Sexton said that a portion of it is. Councilwoman Gervig asked if they had a maintenance area included in their portion of the plat. Mr. Sexton explained that there was a maintenance area on their plat. He said that the existing lake system that surrounds Polo Island and is shown as part of the drainage dedication on this plat is part of the previous permit which he believed was the Lake 47 on the old South Florida Water Management District that Mr. Schofield had earlier addressed. He said that all of the other properties that about this lake have been already platted, and when they platted them they placed drainage easements on them. He noted that this plat was not platted so as part of their platting process, they were providing those easements and providing the Property Owners Association documents to maintain those easements. Mr. Sexton explained that they have gone through the SFWMD permitting showing that the SFWMD permit modifications are consistent with the approvals that were given to the system that they were connecting to.

Mayor Bowen questioned when the Property Owners Association document and the UIR clarity were expected. He suggested if it was anticipated to only be a short period of time, that this be postponed to the next Council meeting. Mr. Kurtz said that the timing was such that it should be a matter of days noting that it was put on the agenda with the anticipation that it could have been resolved prior to the Council meeting.

Councilman Coates said that he did not want Council to be used as a political instrument in light of the present climate and he didn't want anyone accused of advancing this on a faster track than it would ordinarily take.

A motion was made by Councilman Coates, seconded by Vice Mayor Wilhite, and unanimously passed (5-0) to table Resolution No. Resolution No. R2012-10, approval of the Polo Village II Plat, to the next Wellington Council Meeting scheduled for March 13, 2012.

9. PUBLIC FORUM

10. ATTORNEY'S REPORT

MR. KURTZ: No Report

11. MANAGER'S REPORT & UPDATES

MR. SCHOFIELD: Mr. Schofield presented the following report:

EXHIBIT D

NOTICE OF INTENT TO SUSPEND DEVELOPMENT ORDERS

In accordance with Chapter 9 of the Village of Wellington Unified Land Development Code (the "ULDC"), "Compliance with Time Limitations and Conditions of Approval," subsection 5.9.3.A.3., the Village of Wellington hereby issues its notice of intent to suspend development orders for the property known as Wellington Country Place Planned Unit Development located in the eastern half of section 20 and all of section 21.

The legal description of the subject property is as follows: being the East ½ of Section 20, Township 44 South, Range 41 East and Section 21, Township 44 South, Range 41 East; less that part of the Southwest ¼ of said Section 21 described as follows: beginning at the Southwest corner of said Section 21; thence North 00 51' 13" East, along the West line of said Section 21, a distance of 1391.0 feet; thence South 89 17' 17" East, a distance of 1490.0 feet; thence South 00 51' 13" West, parallel with the West line of said Section 21, distance of 1386.26 feet, to the South line of said Section; thence Westerly along the South line of said Section 21, a distance of 1490.02 feet to the Point of Beginning, Less plats recorded as follow: Plat book 37, Pages 123-124; Plat book 38, page 190-191; Plat book 39, page 19-22; Plat book 56, pages 87-88; Plat book 60, pages 143-144; Plat book 61, pages 112-113; Plat book 61, pages 114-115; Plat book 64, pages 187-189; Plat book 64, pages 193-195; Plat book 64, pages 190-192; Plat book 66, page 46; Plat book 66, page 98-99 and Plat book 68, pages 156-157.

A time certain condition of approval contained in Resolution No. R2012-07, involving the Equestrian Village Master Plan Amendment, has not been timely met by the property owner. The specific time certain condition of approval that has not been completed is Condition No. 7 of Resolution R2012-07 which requires the property owner to record the proposed plat of the overall 96.3 acre property by April 1, 2012. Pursuant to Section 5.9.3 of the ULDC, a status review of this project will be conducted by the Village Council on May 22, 2012. Until the review is completed by the Village Council, no new development orders shall be issued by the Village of Wellington for this property. After its review, the Village Council has the discretion to grant an extension of time to comply, modify or eliminate the approval condition, or to rescind the project approval.

Until this review is completed and action taken to release the property from this notice, the Village of Wellington will not issue any new development orders for the subject property. Any questions about this notice should be directed to the Village of Wellington Planning, Zoning and Building Department.

Dated this 4th day of May, 2012

Robert E. Basehart
ROBERT E. BASEHART
Growth Management Director

STATE OF FLORIDA)
COUNTY OF PALM BEACH)

SWORN TO and subscribed before me this 4th day of May 2012, by ROBERT E. BASEHART, who is personally known to me or who produced _____ as identification and who did/did not take an oath.

Jennifer P. Fritz
NOTARY PUBLIC, STATE OF FLORIDA

Jennifer P. Fritz
Print, Type, or Stamp Name of Notary

My Commission Expires:

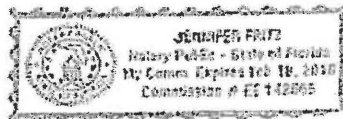


EXHIBIT E

Wellington, Florida, Unified Land Development Code >> Supplement History Table >> Article 5 -
DEVELOPMENT REVIEW PROCEDURES >> CHAPTER 9. - COMPLIANCE WITH TIME LIMITATIONS
AND CONDITIONS OF APPROVAL >>

CHAPTER 9. - COMPLIANCE WITH TIME LIMITATIONS AND CONDITIONS OF APPROVAL

Sec. 5.9.1. - General.

Sec. 5.9.2. - Applicability.

Sec. 5.9.3. - Penalties.

Sec. 5.9.4. - Supplemental regulations for review of development orders.

Sec. 5.9.1. - General.

Purpose and Intent.

- A. It is the intent of the Village Council to provide for the public health, safety and welfare by establishing procedures for mandatory review of certain development orders. Chapter 163, part II, Florida Statutes, entitled "Local Government Comprehensive Planning and Land Development Regulations Act" provides that all development regulations shall be consistent with the adopted comprehensive plan. Chapter 163 further provides that public facilities and services shall be available concurrent with the impacts of development. Pursuant to Chapter 163, the Village's Comprehensive Plan requires that the applicant for all development orders or permits must demonstrate that the necessary public facilities and services are available. To ensure the availability of facilities and services to proposed developments, it is necessary that developments which have reserved capacity proceed in the prescribed time. Systematic monitoring and subsequent review of approved development orders will help implement the goals within the comprehensive plan by:
1. Preserving the availability of public facilities and services for proposed development by removing capacity reserved for inactive development.
 2. Minimizing the creation of an artificially inflated inventory of residential, commercial, and industrial development.
 3. Enhancing the value and use of land in the Village by identifying and providing a system to eliminate obsolete approvals which distort the official land use inventory.
 4. Encouraging compliance with improved performance and site design standards by providing a system whereby approved, but unbuilt, developments are subject to periodic review.
- B. It is the intent of the Village Council to ensure compliance with the conditions of development orders and with specific time requirements for the completion of activities associated with said approvals or with this Code. The Village Council recognizes that unforeseen factors may interfere with the established schedule. This section creates an administrative program to monitor and provide

extensions for activities which must be completed within a certain time period pursuant to a development order or pursuant to this Code.

- C. The Village Council recognizes that development is a complicated process. Despite efforts on the part of developers to proceed according to plans, unforeseen factors may interfere with the schedule of development and compliance with conditions of approval. Administrative reviews must be flexible enough to accommodate unforeseen circumstances. The review procedure created in this section establishes a flexible system for administrative review and monitoring of the progress of development and approval of time extensions.
- D. To meet the intent of this section, the Village Council may review development orders issued prior to the adoption of this code for compliance with the time requirements of this code and for compliance with conditions of approval.
- E. When the Village Council or any provision of this Code has imposed a condition of development approval or time limit for the completion or duration of a specific activity or phase of development, the property owner shall be responsible for compliance.

Sec. 5.9.2. - Applicability.

- A. This section shall apply to:
 - 1. All development orders with a time requirement for completing one or more actions as identified in Table 5.8-1 or in the development process as required by specific sections of this code.
 - 2. All development with conditions of approval.
- B. The following are exempt from this section:
 - 1. Any development order for rezoning to the PO-Public Ownership District which does not have an approved conditional use.
 - 2. Any development order initiated by staff at the direction of the Village Council after a review pursuant to this section.
 - 3. Any development order for a rezoning of a single lot from residential zoning district that corresponds to the minimum density permitted in the Comprehensive Plan Future Land Use designation for that lot, provided there is no concurrency reservation or concurrency exemption for the property.

For development orders which are subject to the requirements of this section, the time limitations shall apply to those approved prior to or subsequent to the effective date of this amendment.

Sec. 5.9.3. - Procedures.

- A. Suspension: Suspension of development orders upon failure to comply with time requirements or failure to comply with condition of development approval.
 - 1. Upon expiration of any time period established by this Code or for any failure to comply with a condition of development approval, no new development orders affecting the property shall be issued by The Village until a final determination is made by the planning and zoning director, or designee, or Village Council pursuant to subsections 5.9.3.B. and 5.9.3.E. herein. There will be no suspension of development rights if the only recommendation in the status report to the Village Council is to delete a condition of approval. This suspension of

development rights shall not preclude the property owner from filing a new petition for the subject property to amend or supersede an existing development order, or the Village Council or Planning, Zoning and Adjustment Board from approving this petition.

2. This suspension of development rights shall have the following effect on new petitions and code enforcement actions:
 - a. If the property owner files a new petition, no new development orders shall be issued until the completion of the zoning process except the development order which approves the petition.
 - b. If the Village Council directs staff to cite the property owner for violating the provisions of the Code, no new development orders shall be issued until the alleged violation has been ruled upon by the code enforcement board, and any enforcement action is completed, or penalty is satisfied. This shall not, however preclude compliance with the specific condition cited in the status report after the Village Council or Planning, Zoning and Adjustment Board has directed the Code Enforcement Division to cite the property owner for noncompliance with that condition.
3. Upon the expiration of any time period or upon reasonable cause to believe that a condition of development approval has been violated, a document shall be filed with the clerk of the circuit court to be placed with the records governing title to the affected property except as provided in subsection 5.9.3.A. herein. This document may apply only to that portion of the property related to the expired time period, or any condition violated. The document shall give record notice that:
 - a. A condition of development has been violated or a time certain activity has not proceeded as required;
 - b. A review of the project will be conducted pursuant to terms of this section;
 - c. Until the review is completed, no new development orders shall be issued by The Village; and
 - d. Such other information as may be reasonable and necessary to afford adequate record notice of the effect of this section on the rights of property owners.
4. If the Village Council, or the executive director approves further development pursuant to subsection 5.9.3.B. or 5.9.3.E. herein, a second document shall be filed with the clerk of the circuit court to be placed with the records governing title to the property indicating:
 - a. That the rights to develop have been restored; and,
 - b. Such other information as may be reasonable and necessary to afford adequate record notice of the effect of this section on the rights of property owners.

This document shall only be recorded upon payment of all status report fees as established from time to time by the Village Council. The status report fees may be waived if: (1) the property owner is a government agency; or (2) the property owner is prevented from complying by a government-caused delay or by litigation that would prevent action by the property owner to bring the approval into compliance.

- B. Administrative extension of time.
 - 1.

The owner of record, the current agent, or mortgagor demonstrating a secured interest in the property which is not being protected by the owner may file an application with the executive director of planning, zoning and building for an administrative extension of time. The application shall be made upon such forms and in such a manner, including payment of fees, as prescribed by the Planning, Zoning and Building department.

2. Upon the filing of an application for an administrative extension of time, the executive director, or other person designated by this code, may grant an extension of time to comply with a requirement. A time extension shall commence upon the expiration of the date to comply with the time requirement, or the expiration of the last extension, whichever is applicable.

The maximum duration of an administrative time extension is as follows:

- a. Development order. Table 5.6-1 provides the maximum length of each administrative time extension for each development order governed by this Code.
- b. Conditions of approval. Twelve (12) months shall be the maximum. Subsequent applications may be filed; however, the total administrative extensions approved shall not exceed twenty-four (24) months except when government caused delays can be documented as the reason for failure to meet required deadlines. The executive director, or a designee, shall grant such extensions as necessary to offset government-caused delays, not necessarily equal to the time of delay. It is the responsibility of the property owner to notify staff in writing of the delay however, no application or fee will be required. If the Village Council has previously approved a time extension, any administrative extensions of time shall not extend more than twenty-four (24) months from the original date for compliance except when there have been government-caused delays.
- c. Posting of Performance Surety for a Conditional Certificate of Concurrence Reservation. A one-time six-month administrative time extension shall be the maximum.

3. In reviewing applications for administrative time extensions for requirements other than conditions of approval, the executive director or designee shall approve a time extension if the development order is:
 - a. Consistent with the Village Comprehensive Plan;
 - b. Consistent with the Land Development Regulations; and
 - c. Complying with the Countywide Traffic Performance Standard.
4. In reviewing applications for administrative time extensions for compliance with conditions of approval, the executive director, or designee, shall consider the following:
 - a. Attempts by the applicant to complete the unfulfilled condition;
 - b. The reliance by other parties on the timely performance of activity;
 - c. Any changed circumstances which may have interfered with the ability of the property owner to meet the time certain requirement;
 - d. Actions of other parties that may have precluded compliance;
 - e. The existence of extraordinary mitigating factors;
 - f.

Compliance with the review criteria in subsection 11.4.3.E criteria 1- 5, above, for posting of performance surety for a conditional certificate of concurrency reservation.

5. When the extension of time is for the payment of fees, the amount due shall increase by an interest payment equal to twelve (12) percent a year. If the extension covers a period less than a year, then the interest shall be prorated.
 6. When the executive director or designee approves an extension of time for completion of a time certain requirement, he/she may require the property owner to guarantee the completion by furnishing a cash deposit, letter of credit, or surety bond.
- C. Appeal. An appeal of a denial of an administrative time extension may be made to the Village Council. An appeal shall be made upon forms prescribed by the department within thirty (30) days of the mailing of the notice that the request for an administrative extension has been denied. The appeal shall be set on the zoning authority agenda within sixty (60) days of receipt by the department. The Village Council shall either affirm the decision of the department or grant an extension of time. An extension of time may be granted only upon a finding by the Village Council that the requirements of subsection 5.9.3.B.3. or 5.9.3.B.4., as appropriate, have been satisfied.
- D. Failure to comply with conditions or time requirements.
1. In the event that a property owner fails to comply with a time requirement and has not received a time extension or a property owner violates a condition of approval, staff shall advertise a status report public hearing for the agenda of the Village Council or Planning, Zoning and Adjustment Board. The hearing shall be held within ninety (90) days of the filing of the notice required by subsection 5.9.3.A.1. herein. Unless the property owner utilizes the provisions of subsection 5.9.3.D.1. below, staff may delay the scheduling of the status report public hearing if, prior to the most recent deadline for compliance:
 - a. The property owner files for an amended or new development order which may affect the time requirement or any condition being violated. If the new petition is approved and the time requirement has not been affected, or if the petition is denied, staff will place the status report on a Village Council or Planning, Zoning and Adjustment Board agenda within sixty (60) days; or
 - b. Staff is notified by the property owner that there is a deadline to commence development or record a plat, and that either a complete building permit application has been submitted, or technical compliance for a plat has been received, as appropriate, and development will commence, or the plat will be recorded, within ninety (90) days of the deadline. The suspension of development orders as required by subsection 5.9.3.A. will only occur if development has not commenced, or a plat has not been recorded within the ninety-day time period.
 2. The status report shall contain a description of the development order, a summary of the background and current status of the development, including any documentation provided to staff of efforts to comply with the requirement, or circumstances beyond the control and cause of the property owner, other than economic conditions, which have prevented compliance; a description of any uncompleted conditions or time certain requirements; a review of criteria set forth in subsection 5.9.3.B.4 for status reports prepared for failure to comply with a

condition of approval, as well as a determination of whether the development order:

- a. is consistent with the Village Comprehensive Plan;
- b. is consistent with the Land Development Regulations; and
- c. Complies with the Countywide Traffic Performance Standard.

Based on the above factors, staff shall make a recommendation for one (1) or more of the actions identified in subsection 5.9.3.E.2. herein.

- 3. An administrative status report fee shall be established by the Village Council in order to provide for this process.
- 4. Consideration of all actions, except a rezoning, permitted by Sec. 5.9.3.E.2., shall occur in the following manner:
 - a. Public hearing. At least one (1) public hearing shall be held by the Planning, Zoning and Adjustment Board or by the Village Council, as applicable.
 - b. Mail notice. The owner of record shall be notified in writing of the executive director's status report and recommendation to the Village Council or Planning, Zoning and Adjustment Board. Written notice shall consist of a letter sent at least fourteen (14) calendar days prior to the hearing by certified mail, return receipt requested, to the last known address of the owner of record as it appears in the official records of the Palm Beach County Property Appraiser's Office. Proof of the receipt shall be presented at the hearing. In the event that the owner fails to acknowledge receipt of mail notice or the notice is returned unopened, newspaper publication, as set forth below, shall be deemed sufficient notice. Written notice shall include:
 - i. A statement that the time period has expired or that a condition of approval has been violated and that the development shall be subject to review;
 - ii. The executive director's recommendation to the Village Council or Planning, Zoning and Adjustment Board;
 - iii. A statement that review may result in one (1) or more of the actions identified in subsection 5.9.3.E.2., herein;
 - iv. Notice of the date, time, and place of the hearing before the Village Council or Planning, Zoning and Adjustment Board, during which the report and recommendation of the executive director will be heard;
 - v. A statement of the owner's right to appear and to present relevant information to rebut or to supplement the report of the executive director; and
 - vi. Such other information as may be necessary and appropriate to accomplish the goals of this section.
 - c. Newspaper Publication. Notice of the hearing shall be published in a newspaper of general circulation in accordance with Sec. 125.66(2)(a). Notice shall be published at least ten (10) days prior to the hearing.
- 5. Consideration of all re-zonings on properties less than ten (10) contiguous acres, by the Village Council, shall occur in the following manner:
 - a.

Public hearing. The Village Council shall hold at least one (1) public hearing on a proposed amendment to the boundaries of the Future Land Use Map.

- b. Mail notice. The owner of record shall be notified in writing of the executive director's status report and recommendation to the Village Council. Written notice shall consist of a letter sent at least thirty (30) calendar days prior to the hearing by certified mail, return receipt requested, in accordance with Section 125.66(4)(a), Fla. Stat. In the event that the owner fails to acknowledge receipt of mail notice or the notice is returned unopened, newspaper publication, as set forth below, shall be deemed sufficient notice. In addition to the requirements of Sec. 125.66(4)(a), Fla. Stat., written notice shall include the items as stated in Sec. 5.9.3.D.4.b i-vi above.

- c. Newspaper publication. In addition to the notice mailed to the owner of record, notice of the hearing shall be published in a newspaper of general circulation in accordance with Sec. 125.66(2) of the Fla. Stat. Notice shall be published at least ten (10) days prior to the hearing.

6. Prior to consideration of all rezoning on properties of ten (10) or more contiguous acres by the Village Council, notice to the owner of record and advertisement of the proceedings shall occur in the following manner:

- a. Public hearing. The Village Council shall hold two (2) public hearings on a proposed amendment to the boundaries of the Future Land Use Map when the amendment would affect ten (10) or more contiguous acres of total unincorporated land area. The second public hearing shall be held at least ten (10) calendar days after the first public hearing in accordance with Sec. 125.66(4)(b)1., of Fla. Stat.

- b. Mail notice. The owner of record shall be notified in writing of the executive director's status report and recommendation to the Village Council and shall be notified in accordance with Section 125.66(4)(b)2., Fla. Stat. Written notice shall consist of a letter sent at least thirty (30) calendar days prior to both the first and second hearing by certified mail, return receipt requested, to the last known address of the owner of record as it appears in the official records of the Palm Beach County Property Appraiser's Office. In the event that the owner fails to acknowledge receipt of mail notice or the notice is returned unopened, newspaper publication, as set forth below, shall be deemed sufficient notice. Written notice shall include the items as stated in Sec. 5.9.3.D.4.b i-vi above.

- c. Newspaper publication. In addition to the notice mailed to the owner of record, notice shall be published in a newspaper of general circulation in the County. Notice shall be published once for each hearing; the first publication shall be at least seven (7) calendar days prior to the date of the first hearing and the second publication shall be at least five (5) calendar days prior to the second hearing.

7. The notice shall state the date, time, and place of the hearing; the proposed action; and the place within the Village where the status report and recommendation may be inspected by the public. The notice shall advise that interested parties may appear at the hearing and be heard with respect to the report and recommendation. A copy of such notice shall be kept available for

public inspection at the Planning, Zoning and Building Department during regular business hours.

E. Decision by the Village Council or Planning, Zoning and Adjustment Board.

1. The Village Council or Planning, Zoning and Adjustment Board shall consider the factors enumerated in subsection 5.9.3.D.2., above, and the recommendation of the department.
2. After deliberation, the Village Council or Planning, Zoning and Adjustment Board shall take one (1) or more of the following actions:
 - a. Adopt a resolution which will rezone the property to an appropriate zoning district.
 - b. Adopt a resolution which will revoke the approval for the conditional use or special exception.
 - c. Adopt a resolution which will impose a limit such that no development order shall be issued permitting construction which exceeds entitlement density or entitlement intensity as established by the Land Use Element of the Village Comprehensive Plan.
 - d. Adopt a resolution which will impose additional or modified conditions or permit the property owner to initiate a petition to add or modify conditions, as directed by the board. New or modified conditions may include bringing the development into conformity with current codes and regulations.
 - e. Direct staff to cite the property owner for violating the provisions of this Code.
 - f. Grant a time extension for a period not to exceed twenty-four (24) months during which time the property owner shall comply with the time requirement. The term of the time extension shall commence upon the expiration of the date to complete the time certain activity, or the expiration of the last extension, whichever is applicable. When the board approves an extension of time for the payments of fees, the amount due shall increase by an interest payment equal to twelve (12) percent a year. If the extension covers a period less than a year, the interest shall be prorated.
 - g.
 - i. Posting of surety for a conditional certificate of concurrency. Grant a one-time six-month time extension for conditions of approval requiring the posting of surety. The term of the time extension shall commence upon the expiration of the date to post surety. In no case shall the total time to post surety exceed twelve (12) months from the date of approval of the development order which imposed the condition to post surety.
 - ii. All other conditions of approval. Grant a time extension for a period not to exceed twenty-four (24) months during which time the property owner shall comply with the time requirement. The term of the time extension shall commence upon the expiration of the date to complete the time certain activity, or the expiration of the last extension, whichever is applicable. When the Board approves an extension of time for the payment of fees, the amount due shall increase by an interest payment of equal to twelve (12) percent a year. If the extension covers a period less than a year, the interest shall be prorated.

- g. Amend or revoke the development order or map amendment for the undeveloped or unplatted portion of the project.
 - h. Exempt from further review of any development order which rezoned property to a district which corresponds to the density or intensity permitted by the Comprehensive Plan Future Land Use designation, provided there is no concurrency reservation or exemption for the property. This exemption may be applied to any advertised status report after adoption of this amendment.
 - i. Deny or revoke a building permit; issue a stop work order; deny a Certificate of Occupancy on any building or structure; deny or revoke any permit or approval for any developer-owner, commercial-owner, lessee, or user of the subject property.
- 3. If the Village Council or Planning, Zoning and Adjustment Board fails to act on staff recommendations within the prescribed time period, or if the executive director or designee grants an administrative time extension, the issuance of new development orders shall immediately resume.
 - 4. The decision of the Village Council or Planning, Zoning and Adjustment Board shall be rendered within sixty-five (65) days of the originally advertised public hearing, provided that the property owner has not requested a postponement of the matter. A postponement approved at the request of the property owner may not exceed twelve (12) months from the due date for compliance.
- F. Expiration of time extensions granted by the Village Council. In the event that the property owner has not complied with the condition of development approval or time certain activity at the expiration of a time extension, the development order shall be subject to the requirements of subsections 5.9.3.B., or 5.9.3.D. and 5.9.3.E. herein, as appropriate.

Sec. 5.9.4. - *Supplementary regulations for classes of development orders.*

- A. General. For specific types of development approvals, this section:
 - 1. Designates the next required development permit or action and minimum time period for receipt of permit or commencement of action;
 - 2. Provides the maximum time to obtain permit or commence action;
 - 3. Provides the maximum length of an administrative time extension for commencing next required action or receiving the next required development permit;
 - 4. Designates the staff person who may approve an administrative extension of time; and
 - 5. Provides for action upon failure to comply with the time requirement without an approval time extension.
- B. Classes of development approvals. Unless otherwise established in the development order, the time frames provided in Table 5.8-1 apply. Permitted time frames do not change with successive owners.
- C. Effect of phasing on time frames for receipt of a required permit or commencement of a required action.
 - 1. Planned Unit Development Districts. The development order and master plan or final subdivision plan for the planned unit development may provide for phasing. If the development order specifies phasing, a master plan shall provide the order

in which plats will be recorded. Table 5.8-1 provides time requirements for recording plats.

2. Conditional uses or Planned Development Districts other than Planned Unit Development Districts. The Final site plan/Final Subdivision plan for the conditional use or planned development may provide for phasing. If the Final site plan/Final subdivision plan specifies phasing, it shall provide a phasing order in which development will commence. Table 5.8-1 provides the maximum number of phases permitted for each type of development order. Each phase must contain a minimum of twenty (20) percent of the land area unless otherwise approved in the development order approved by the Village Council or Planning, Zoning and Adjustment Board. Table 5.8-1 also provides time requirements for commencement of development.

D. Effect of modification to a development order on the time requirements of this section.

1. Planned development district or conditional use:
 - a. Administrative modification of site plan does not alter original time certain requirement.
 - b. Village Council modification to development orders may include a condition of approval which provides a new time for commencement of development or to record a plat (up to the maximum time permitted for a new development order) if the modification is determined to be a substantial change in land use as defined in Sec. 3.2.
2. Final site plan or final subdivision plan may be modified by the Development Review Committee. A modification, unless determined to be materially different by the DRC, shall not establish a new time to commence development or record a plat.

Table 5.8.1
Time limitations of Development Order For Each Phase

TIME LIMITATIONS OF DEVELOPMENT ORDER FOR EACH PHASE

Type of Development Order	Maximum Number of Phases	Next Required Action or Development Order	Maximum Time to Receive Development Permit or Commence Development	Maximum Length of Administrative Time Extension ¹	Action Upon Failure to Comply With Time Requirement Without an Approved Time Extension
Rezoning	2	Commence development	three (3) years ²	twelve (12) months	Village Council review pursuant to subsections C.1 and C.5 herein
Conditional Uses Class "A" and Class "B"	2	Commence development or use Conditional Use if no	three (3) years ²	twelve (12) months	Pursuant to subsections C.4 and C.5 herein: Class A -

			construction is required ¹			Village Council review; Class B - Zoning Commission review
Planned Development District: Non Planned Unit Development			Commence development	three (3) years ²	twelve (12) months	Village Council review pursuant to subsections C.4 and C.5 herein
Planned Development District: Planned Unit Development		no maximum	Record plat	three (3) years ²	no extensions permitted	Village Council review pursuant to subsections C.4 and C.5 herein
Development Orders Which at the Time of Certification are not Associated With any Other Development Order Which is Subject to the Requirements of Section 5.8 (Those Listed Above):	Site Plan	2	Commence development	four (4) years ²	no extensions permitted	Plan null and void for the undeveloped phases of a site plan, and unplatted phases of a subdivision plan.
	Final Subdivision Plan: Non- Residential	2	Commence development	four (4) years ²		
	Final Subdivision Plan: Residential	no maximum	Record plat	three (3) years ²		

Notes for Table 5.B.1

1. Commencement of development shall consist of:
 - a. Receipt of a building permit and first inspection approval for a) the entire development, or b) all of the next phase if phasing is provided by the development order and final Master Plan pursuant to subsection 5.8.4.C.2 herein; or
 - b. The initiation of significant site improvements such that the improvements would only permit the development of the approved project, and any other pattern of development would require extensive changes to the installed improvements.
- Commencement of development shall not consist of:
 - a. The dividing of land into parcels, unless the determination of commencement is to be made for property with straight residential zoning and this division is accomplished through the recordation of a plat or plat waiver; or
 - b. Demolition of a structure; or
 - c.

Deposit of refuse, solid or liquid waste, or fill on the parcel unless the development order is exclusively and specifically for such; or

d. Clearing of land.

From resolution adoption date for first phase, and from date of commencement of development of last phase, or last plat recordation date, for subsequent phases.

From plan certification date for first phase, and from date of commencement of development of last phase, or last plat recordation date, for subsequent phases.

All administrative time extensions listed in this table are to be approved or denied by the Director of Community Services.



A GREAT HOMETOWN

Council

Bob Margolis, Mayor
Howard K. Conner, Jr., Vice Mayor
Men Wilbhe, Councilman
Anne George, Councilwoman
John Green, Councilman

Manager
Paul Schofield

May 2, 2012

Mark Bellissimo, Managing Partner
Far Niente Stables, LLC
Polo Field One, LLC
Stadium North, LLC
Stadium South, LLC
14440 Pierson Road
Wellington, FL 33414

SUBJECT: EQUESTRIAN VILLAGE COMPATIBILITY DETERMINATION, VILLAGE OF WELLINGTON RESOLUTION NO. R2012-08~ FAILURE TO COMPLY WITH TIME CERTAIN APPROVAL CONDITIONS.

Dear Mr. Bellissimo:

This letter is to notify you that your failure to comply with time certain conditions of approval contained in the above referenced Resolution has resulted in the need to present the project to the Village Council for Status Review, consistent with the provisions of Sec. 5.9.3.D. of the Wellington Land Development Regulations. Specifically, Condition #3 of Resolution R2012-08 which requires that the property owner apply for setback variance for the existing cell tower by May 1, 2012 and Condition #35 which requires that the proposed plat of the 59.3 acre property shall be recorded by March 31, 2012 has not been met.

This matter will be placed on the Village Council agenda scheduled for May 22, 2012. The Village Council has the discretion to grant an extension of time to comply, modify or eliminate the approval condition, or to rescind the project approval. You and/or your representative(s) will have opportunity to provide testimony. Staff intends to recommend that approvals granted under Resolution R2012-08 be extended for 90 days if completed Final Plat documents, with all required property owner signatures, have been submitted by May 22, 2012; and evidence is provided that other time certain approval conditions contained in R2012-08 with deadlines later in 2012 will be met.

Further, please be advised that in accordance with the provisions of Sec. 5.9.3.A.1, the ability to obtain new development orders on the subject property has been suspended until this Status issue has been resolved.

Please do not hesitate to contact me if you have any questions relative to this matter.

Very truly yours,

Robert E. Basehart, AICP
Growth Management Director

Cc: Paul Schofield, Village Manager
Jeff Kurtz, Village Attorney
David Flinchum, Planning & Zoning Manager
Jacek Tomasik, Building Official



PROJECT DESCRIPTION

Petition Number: 2011-033 CU1/Compatibility Determination (Status Report)

Original Resolution: R2012-08, Adopted February 2, 2012

Project Name: Equestrian Village Commercial Equestrian Arena Compatibility Determination

Applicant: Equestrian Sports Partners, LLC

Owners: Far Niente Stables II, LLC
Polo Field One, LLC
Stadium North, LLC
Stadium South, LLC
Mark Bellissimo, Managing Partner
14440 Pierson Road
Wellington, Florida 33414

White Birch Farm, Inc.
Peter M. Brant, President
80 Field Point Road
Greenwich, CT. 06830

Location: Northeast corner of South Shore Boulevard on the north side of Pierson Road

PCNs: 73-41-44-16-00-000-5030, 5040, 5050, 5060 and 5070

Acres: 59.3 acres.

Original Approval: Compatibility Determination for a Commercial Equestrian Arena in the Urban Service Area with approval conditions to mitigate potential incompatibility issues.

Background:

The 59.3 acre site was granted approval for a Commercial Equestrian Arena pursuant to Resolution 2012-08 (a copy of which is attached). The applicant operated the subject site as a Dressage event facility during the 2011/2012 equestrian season based on a Seasonal Special Use Permit issued by the Village. The purpose of processing the Compatibility Determination application that was approved under Resolution R2012-08 was to obtain an approval to operate the facility perpetually, without the need to obtain annual Special Use permits, and to ultimately allow more permanent structures, as opposed to using tents and other nonpermanent structures for events. The approval

was granted on February 2, 2012, subject to 37 conditions of approval.

The Commercial Equestrian Arena approval was subject to 37 conditions, including condition number 35 that required a plat for the 59.3 acre property be recorded by March 31, 2012. At the February 28, 2012 Council meeting, the Village Council refused to approve the proposed plat for the 96.3 acre parcel (which includes the Commercial Equestrian Arena site) as the plat approval was the subject of several conditions (copy of minutes of February 28th meeting are attached). The approval of the plat was tabled to the March 13, 2012 meeting, however, to date the property owners have not submitted an executed copy of the plat mylar with all of the requisite owner and mortgagee signatures. Therefore, the plat has not been placed back on a Council agenda for final approval. In the interim, the then existing title questions have been resolved to the satisfaction of the Village Attorney and the POA documents have been approved for recordation. The site plan on which the plat is based has been approved by the DRC.

The property owners did not request an extension of time in order to comply with the platting condition prior to March 31st. Pursuant to Section 5.9.1.E of Wellington's Land Development Regulations (LDR) the property owner is responsible for timely compliance with any condition of development approval. In the absence of compliance and the absence of a timely filed request for extension of time, suspension of the development order is appropriate in accordance with Section 5.9.3 of the LDR. A copy of the suspension order, to be recorded in the official records of Palm Beach County, is attached. In order to address the situation and give the owner the opportunity to make a presentation to Council, a review of the matter and public hearing has been scheduled for Council's consideration at their May 22, 2012 meeting.

Site History:

In 1972, the Wellington Planned Unit Development (PUD) was originally approved by Palm Beach County. The PUD consists of 7,562 acres and currently has an approval for 14,648 dwelling units with an overall density of 2.0 dwelling per acre. The property was originally the center of the Polo industry started by Mr. William Ylvisaker back in the 1970's. The site consisted of the original Polo Stadium with four polo fields with Fields 1 & 2 west of Polo Island and Fields 3 & 4 east of Polo Island. In the early days, the polo fields were frequently used for matches and several recreational community events. After Wellington's Incorporation, polo activity was limited and in 2007 the original Polo Stadium was demolished. Polo is now being played competitively at the new International Polo Club on the west side of 120th Avenue. In recent years Fields 1 & 2 have been used for Steeplechase competition. In 2011-12, pursuant to a special use permit, the site was utilized for dressage events and stabling.

On December 31, 1995, Wellington was incorporated and on January 19, 1999 Wellington's Comprehensive Plan was adopted. The Comprehensive Plan included an Equestrian Element which required Wellington to create an Equestrian Preserve Area boundary. Between June 2006 and October 2007 according to the Palm Beach County Public Records Warranty Deeds several of these properties were individually sold to Far Niente Stables II, Polo Field One, LLC, Stadium North, LLC and Stadium South, LLC. A preliminary plat has been recently submitted to combine these properties. The property is within the Equestrian Preserve Area Sub Area D.

The Commercial Equestrian Arena approval granted on February 2, 2012 incorporates the activities previously approved with Special Use Permit dated April 28, 2011 for the 2011/2012 Dressage Festival, as well as Permitted Uses and equestrian related structures in accordance with the

Equestrian Village Site Plan Amendment approved November 9, 2011 by the Development Review Committee.

All the property owners joined together to request a special use permit for a dressage facility for the 2011-12 equestrian season. In addition, the property owners joined together to request approval for the construction of barns, equestrian rings and a covered equestrian arena. Those structures were permitted but the certificates of completion/occupancy were subject to the platting of the property and the submittal and approval of a landscaping plan for the western portion of the property. While certificates were inadvertently granted for some of the structures, they have been revoked subject to those same original conditions. The platting of the property is necessary for the structures to be granted final certificates of occupancy/completion.

Current Request:

The staff suspended the Commercial Equestrian Arena approval and initiated this request for a "Status Review" and Council action consistent with the provisions of Sec. 5.9.3.D of the Land Development Requirements. This Code provision provides a required review and decision making process for applications that are in violation of conditions of approval that impose time-certain requirements for implementation. Resolution R2012-08 which approved Petition No. 2011-033 CU1 contains 37 conditions of approval, eight of which contain time limits for implementation. Condition #35 which requires that the 59.3 acre property shall be platted prior to March 31, 2012, is in default. The six other Conditions with time certain deadlines that have not yet defaulted require that significant bridle path improvements with appropriate driveway crossings, signalized horse crossings with advance pavement markings and signage be installed at the Pierson Road/South Shore Blvd and the Pierson Road/Southfields Road intersections, and vehicular turn lanes at South Shore Boulevard and Pierson Road be started by August 1, 2012 and completed prior to November 1, 2012. The intent of all of these approval conditions is that the equestrian and traffic improvements they require will be completed in time for next year's equestrian season. Staff is concerned if the Council approves extensions for the two Conditions currently being considered are granted, an additional Status Review will need to be initiated in August based on the applicant's failure to begin construction on the above mentioned improvements. As of the date of the writing of this report there have been no applications for permits for any of these improvements, a process that involves multiple agencies and generally takes at least 60 days. Staff believes that if the current needed extensions are granted, conditions of approval should be imposed that require the property owner to bond the improvements contemplated by Conditions 26-30 of Resolution No. 2012-08 (a copy of Section 5.9 of the LDR is attached).

Options:

Council must hold a public hearing and take one of the following alternative actions:

- Grant an extension of time to comply with the approval Conditions in question.
- Modify or eliminate the Conditions in question.
- Revoke the entire project approval for failure to comply.
- Refer the matter to the Equestrian Preserve Committee and/or the Planning, Zoning & Adjustment Board for a recommendation.

Staff Analysis

Sections 5.9.3.D.2 and 5.9.3.E.2 of the Land Development Requirements provide the criteria for the findings that must be considered for decision(s) on Status Review cases. Those criteria are:

- *The original development order remains consistent with the Village Comprehensive Plan:* There have been no changes to the Comprehensive Plan that would affect the subject property since the approval resolution was adopted. Therefore, the approval granted on February 2, 2012 remains consistent.
- *The original development order remains consistent with the Land Development Regulations:* There have been no changes to the LDR that would affect the subject property since the approval resolution was adopted. Therefore, the approval granted on February 2, 2012 remains consistent.
- *The original development order remains in compliance with the Countywide Traffic Performance Standards:* The approval granted on February 2, 2012 remains consistent.
- *Attempts by the applicant to complete the unfulfilled condition:* The applicant has attempted to complete the platting requirement. An approved DRC Subdivision Plan has been submitted and approved, Preliminary Plat approval has been obtained and the matter was placed on agendas of the Village Council for Final Plat approval. However, the applicant has not been able to obtain final approval because of his inability to obtain the signature of one of the involved property owners on the Plat's mylar. On February 28, 2012 the approval of the Final Plat was on the Village Council agenda and staff offered the option of Council approving same with a condition that it not be recorded until the final signature is obtained, but that option was declined by Council. The applicant on May 3, 2012, submitted a revised plat document that reflects the transfer of the telecommunications tower site from Palm Beach Polo, Inc. to Polo Field One, LLC, and reflects the site as an easement rather than a separate lot. If the plat is approved as now submitted, the condition of the Commercial Equestrian Arena compatibility determination requiring a variance for the location of the covered equestrian arena would be eliminated. The transfer also eliminates the need to secure Palm Beach Polo, Inc.'s signature on the plat as an owner and through a contemporaneous transaction, Palm Beach Polo, Inc.'s mortgage interest in the property was satisfied, eliminating the need for their signature on the plat as a mortgagee. The transactions which simplify ownership of the property took place on or about April 30, 2012.
- *Reliance by other parties on the timely performance of activity:* The Plat requirement does not impact any other parties.
- *Any changed circumstances which may have interfered with the ability of the property owner to meet the time certain requirement:* Ownership issues addressed above.
- *Actions by other parties that may have precluded compliance:* The party causing the inability to comply was one of the applicants, so the reason for the delay is internally created.

- *The existence of extraordinary mitigating factors: None known.*
- *Compliance with the review criteria in subsection 11.4.3.E criteria 1-5, above, for posting of performance surety for a conditional certificate of concurrency reservation: Not applicable.*

Notification:

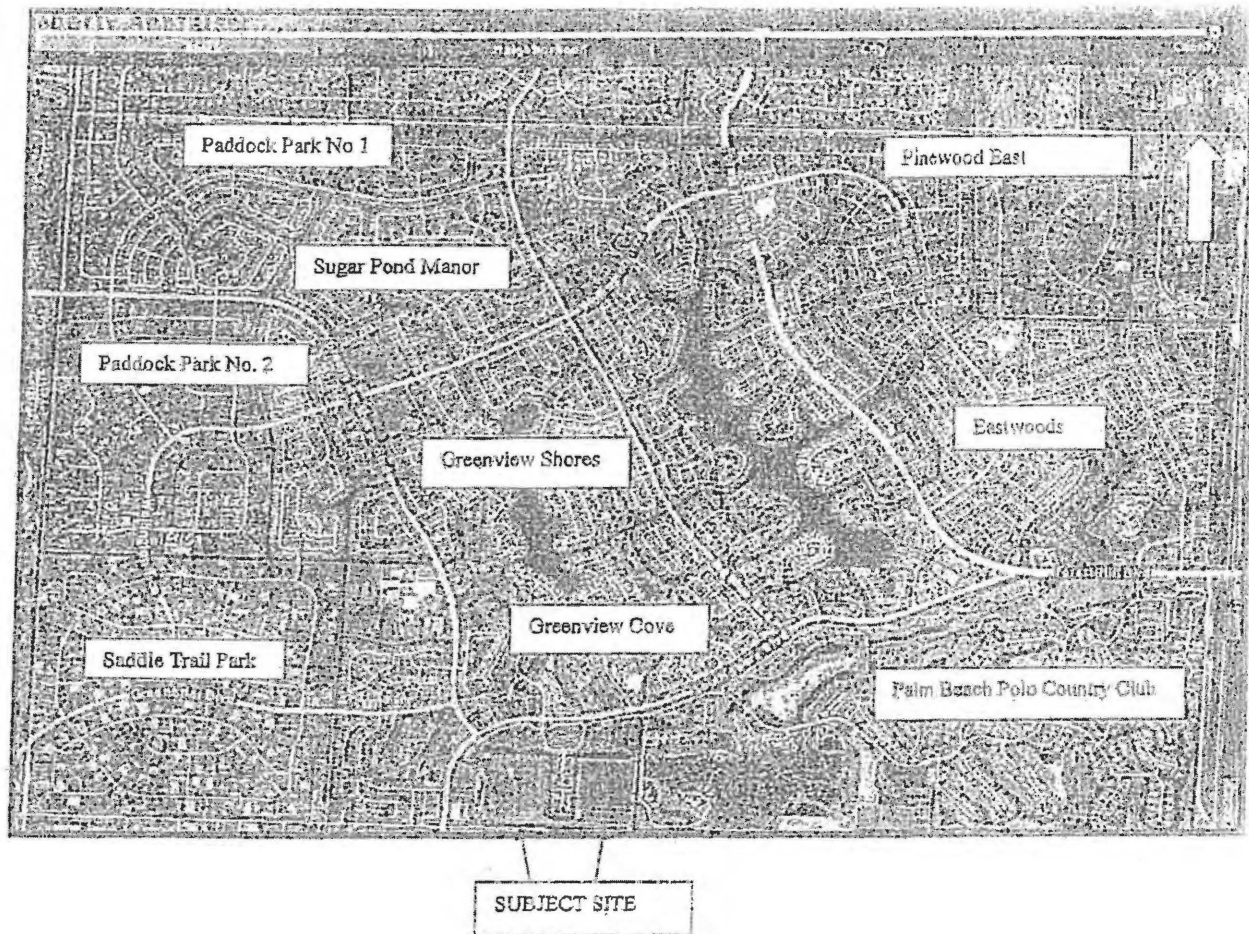
The property owner was notified of this review and given a copy of the staff recommendation in a certified mail package. Further, a Notice of Intent to Suspend Development Orders was recorded. A Notice of Hearing was published in the Palm Beach Post on May 10, 2012.

Staff recommendation

Based on the review criteria provided in Sections 5.9.3.D.2 and 5.9.3.E.2 of the Wellington Land Development Regulations Staff recommends approval of an extension for the deadline to record a plat of the 59.3 acre property approved under Resolution R2012-07 to September 1, 2012, subject to the following condition:

- 1). The property owner shall provide surety by June 1, 2012 in the amount of 110% of the estimate of cost for the improvements required by Conditions #26-30 of Resolution R2012-08, certified by a licensed Engineer.





1. The Equestrian Village Commercial Equestrian Arena is consistent with the Comprehensive Plan;
2. The subject request is consistent with the stated purposes and intent of the Land Development Regulations;
3. The Equestrian Village Commercial Equestrian Arena is consistent and compatible with the surrounding land uses and zoning districts;
4. No adverse impacts to the natural environment are expected to occur as a result of the approval of the request;
5. The Equestrian Village Commercial Equestrian Arena development would result in a logical and orderly development pattern;
6. The applicable Equestrian Overlay Zoning District hours of operation shall be modified as set forth herein; and
7. There exist Adequate Public Facilities to support the Commercial Equestrian Arena.

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

SECTION 1. The Equestrian Village Compatibility Determination for the Commercial Equestrian Arena, is hereby APPROVED/DENIED as described in Exhibit "A", subject to the conditions of approval contained herein, which are in addition to the general requirements otherwise provided by this resolution.

Conditions of Approval:-

Staff recommended approval conditions are as follows:

1. Commercial Equestrian Arena hours of operation shall be limited from 7:00 am to 10:00 pm.
2. The Commercial Equestrian Arena site plan shall be revised to indicate the location of accessory commercial activities in designated hospitality and vendor areas.
3. If the proposed plat for Commercial Equestrian Arena indicates a separate parcel for the existing Cell Tower, a variance will be required for riding and show rings located within 100 feet of any property line. In that event,

- 1 Developer shall submit by May 1, 2012 an application for a Variance seeking
2 relief from the required 100 feet setback from the cell tower to the Covered
3 Equestrian Ring
- 4 4. All parking lot lighting shall be limited to a maximum of 15 feet in height.
- 5 5. Use of portable generators is prohibited unless "Quiet Pack" generators are
6 utilized and all generators shall be located away from the residences.
- 7 6. The use of amplified sound systems and equipment including (radio, iPod or
8 similar devices with auxiliary speakers, record players, similar music devices)
9 or televisions are prohibited in permanent barns or temporary stabling tents
10 except to advise riders and exhibitors of upcoming competitive events.
11 Electronic listening devices may be used with earphones.
- 12 7. For monitoring purposes, properly identified Wellington staff including Building
13 Inspectors, Code Compliance Officers and PZB staff shall be allowed
14 unrestricted access to the site.
- 15 8. Only the three western most barns may be constructed at this time. After the
16 commercial equestrian arena has been operating for at least a full year, the
17 owner of the commercial equestrian arena may submit a petition requesting the
18 construction of a fourth barn. The location of this barn shall be subject to the
19 approval of Wellington's Council after a public hearing, following the same
20 procedures required for review of a commercial equestrian arena.
- 21
22 **ENVIRONMENTAL**
- 23
- 24 9. All hoses and hose bbs shall be equipped with an automatic shut off nozzle to
25 restrict water flow.
- 26
- 27 10. Filter fabric or similar equipment to reduce debris from entering the storm water
28 system shall be installed and maintained or replaced as necessary or as
29 directed by Wellington.
- 30 11. All facilities, operations and improvements on the site shall comply with the
31 most recent Best Management Practices (BMPs).
- 32 12. Approved horse hair separators shall be used on horse wash facilities, laundry
33 facilities and equestrian support facilities as required prior to discharge into the
34 public sanitary sewer collection system.
- 35 13. Manure shall be removed from the premises on a daily basis and disposed in a
36 manner approved by the Palm Beach County Health Department. Manure
37 shall be collected and transported by a registered commercial livestock waste
38 hauler or registered livestock self-hauler. Owner/Operator shall coordinate with

Engineering Division to register the name of the manure hauler annually prior to November 1st. Manure shall be removed daily during major events.

14. Livestock waste storage structures shall be elevated in accordance with BMP regulations and shall comply with the design standards of Chapter 30, Article V, of the Wellington Code of Ordinances.

15. Livestock waste storage structures shall be constructed so that no rainfall is allowed to enter and no liquid is released. Temporary tents may be utilized as covers for the waste storage structures, as approved by Wellington's BMP Officer and the Building Division.

BUILDING AND FIRE RESCUE.

16. The applicant shall obtain permits for all structures and tents in accordance with Florida Building Code and including the Fire Code.

17. All tents shall be inspected by the Palm Beach County Fire Rescue Department (PBCFRD) for compliance with applicable Federal, State, County, or Municipal fire protection standards. Tents shall be inspected and approved prior to occupancy.

18. All food vendor tents and facilities shall be inspected, as applicable by Wellington, PBCFRD and the Palm Beach County Health Department (PBCHD) prior to beginning operations.

VENDORS.

19. Applicant shall submit a list of all proposed vendors two weeks prior to major events. All vendors shall also obtain a Business Tax Receipt (formerly Occupational License) from Wellington if required prior to selling or offering services for more than a two week period.

20. Vendors selling food shall obtain PBCHD inspection and approval prior to commencing sales.

SANITARY SERVICES.

21. Applicant shall provide handicap accessible sanitation facilities and portable sanitation stations throughout the Commercial Equestrian Arena show grounds for peak events as noted on the site plan. The applicant and Wellington shall continue a cooperative effort in the collection and disposal of recyclable materials.

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2
3 **TRAFFIC**
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- 5 22. Petitioner shall ensure the proposed 400 stalls shall be limited to on-site use by
6 exhibitors and participants of this Commercial Equestrian Arena only.
7
8 23. No weekday events at the commercial equestrian arena shall begin before 10
9 am or between 4pm and 6pm. No weekday events at the commercial
10 equestrian arena shall end between 4pm and 6pm. Petitioner may resubmit an
11 updated Traffic Study based on seasonal peak periods and scheduled events
12 to demonstrate these additional weekday events are insignificant and may be
13 allowed without a limitation by condition of approval.
14
15 24. In order to comply with the mandatory Traffic Performance Standards, in place
16 at the time of this approval, no building permits for the site shall be issued after
17 December 31, 2016. A time extension for this condition may be approved by
18 the County Engineer based on an approved Traffic Study which complies with
19 the mandatory Traffic Performance Standards in place at the time of the
20 request.
21
22 25. The County traffic concurrency approval is subject to the Project Aggregation
23 Rules set forth in the Traffic Performance Standards Ordinance.
24
25
26 26. The existing South Shore Boulevard driveway to the property shall be
27 maintained or improved to include the following:
28 • A minimum 100 foot throat distance measured from the right-of-way on
29 South Shore Boulevard.
30 • Egress lane at a minimum of 12 feet.
31 • Ingress lane at a minimum of 14 feet.
32 • Minimum pavement return radii of 40 feet.
33 Construction shall be completed prior to November 1, 2012.
34
35
36 27. The proposed Pierson Road driveway to Parcel 30C-3 shall be constructed to
37 include the following:
38 • A minimum 50 foot throat distance measured from the edge of pavement on
39 Pierson Road.
40 • Dual egress lanes at a minimum of 12 feet each with appropriate marking.
41 • Ingress lane at a minimum of 12 feet.
42 • Minimum pavement return radii of 35 feet.
43 • Located no closer than 660 feet from the edge of pavement of South Shore
44 Boulevard.
45

Construction shall be completed prior to November 1, 2012.

25. Prior to August 1, 2012, construction shall begin for the following turn lane:
* Eastbound left turn lane at the proposed Pierson Road driveway to Parcel 30C-3 with a minimum of 280 feet of storage and a 50 foot taper.

Construction of the turn lane shall be completed prior to November 1, 2012.

29. Prior to August 1, 2012, construction shall begin on the east and west approaches of the intersection of Pierson Road and South Shore Boulevard. At a minimum, the geometry of the intersection shall include the following:

East Approach	West Approach
Separate left turn lane with 280 feet of storage	Separate left turn lane with 370 feet of storage
Shared through and right turn lane	Shared through and right turn lane

Construction of these improvements shall include any required signal modifications and right-of-way acquisition. Construction shall be completed prior to November 1, 2012.

30. Prior to August 1, 2012, the applicant shall submit a queuing analysis of the southbound left turn lane on South Shore Boulevard for the existing driveway to the property and the northbound left turn lanes at the intersection of Greenview Shores Boulevard and South Shore Boulevard. The analysis will be based on existing peak season counts and queuing data. If deficiencies are found for either turn lane, the turn lane shall be extended. The monitoring shall continue on an annual basis until 24 months after the last Certificate of Occupancy for the project. If the queues ever cannot be accommodated, no additional building permits shall be issued.

TRAFFIC AND PARKING

31. Traffic and parking control attendants may be employed on-site for non-peak events. PBBO shall be provided on site during peak events expected to draw more than 1,000 spectators. PBBO shall be provided with anticipated start and stop times for the event along with the estimated number of participants and spectators at least two weeks prior to the peak events.
32. Adequate ingress and egress directly to and from South Shore Boulevard and Pierson Road shall be maintained at all times and shall not disrupt normal traffic circulation patterns.

33. Regardless of the number of rings, arenas or venues operating, the maximum number of spectators permitted at the commercial equestrian arena at any time is 3,600 persons.

SIGNS

34. The owner shall submit a Master Sign Plan for review and approval by staff and Wellington's Architectural Review Board (ARB).

PLATTING

35. The owner shall record the plat of the 59.3 acre property for the Commercial Equestrian Arena prior to March 31, 2012.

INFRASTRUCTURE

36. Any improvements within easements to be dedicated to Wellington or within public canals and/or road right of ways shall require 10% surety prior to commencement of construction. (ENGINEER)

SITE DESIGN

37. The Commercial Equestrian Arena and all permanent structures shall be subject to Section 6.5.19.1 Design Standards and Section 6.10.11 Commercial Development Standards in the Equestrian Overlay Zoning District.

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

SECTION 2. The foregoing recitals are hereby affirmed and ratified.

PASSED AND ADOPTED this 2nd day of February, 2012.

RENDERED the 13th day of February, 2012.

ATTEST:

WELLINGTON

By: Awilda Rodriguez
Awilda Rodriguez, Wellington Clerk

By: Darrell Bowen
Darrell Bowen, Mayor

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: Jeffrey P. Kunz
Jeffrey P. Kunz, Attorney for Wellington

EXCERPTS OF
WELLINGTON COUNCIL
MEETING
FEBRUARY 28, 2012

then given to Wellington which automatically goes applied to the insurance policies. Mr. Schofield noted that the only hit that the Building Department took in the last ISO rating was due to the failure to adopt the current version of the Building Code which could not have been done since the legislature had not done so.

Vice Mayor Wilhite asked if Wellington could possibly produce a email segment for Channel 18 or the web page to ensure that residents are made aware that they can contact their insurance company about Wellington's rating. Mr. Schofield said that could be done.

Mr. Tomasiuk also advised Council that this is basically a new document. He explained that the State of Florida adopts the Florida Building Code 2010 on March 15, 2012, and every municipality is required to adopt this Code. He noted that there are several improvements explaining that the Code that was in front of Council is a connection of Wellington's existing Code that they have been enforcing since 2009. He explained the Building Code includes all suggestions from all building officials of Florida who developed a document that is universal as well as the Building Code Advisory Board of Palm Beach County. He explained that this document was also presented to the Construction Board of Wellington and includes all of the new amendments and additions that are required by the State. Mr. Tomasiuk further explained that this document adds the flood requirements for the municipality, adjustments and regulates more of an energy code which is part of the Florida Building Code, the accessibility also has several codes which becomes a separate volume of the Building Code beginning on March 15th, and it adjusts the wind loads and wind resistance for all of the buildings that will be permitted beginning March 16th of this year. He explained that adopting this on March 15th also provides Wellington with the opportunity to modify Chapter One which is being geared towards specific Wellington needs.

Councilwoman Gervig asked what was different about this Code. In response, Mr. Tomasiuk said that the majority of what he focuses on is that it allows Wellington to be a customer-friendly enforcer of the Code which applies to the extension of the building permits, renewal of the building permits that expire for several reasons, and allows the Building Department to work with the customer to their bring construction site to compliance without unnecessary penalties or situations where they may conflict with the Building Code.

A motion was made by Mayor pro tem Priore, seconded by Councilman Costes, and unanimously passed (5-0) approving Ordinance No. 2012-08 on First Reading as presented.

~~C. RESOLUTION NO. 2012-15 (ADDENDUM TO FLORIDA ATLANTIC UNIVERSITY AGREEMENT): A RESOLUTION OF WELLINGTON, FLORIDA'S COUNCIL AUTHORIZING THE MAYOR AND CLERK TO EXECUTE AN ADDENDUM TO AN AGREEMENT BETWEEN WELLINGTON AND FLORIDA ATLANTIC UNIVERSITY, AND PROVIDING AN EFFECTIVE DATE. REMOVED FROM THE AGENDA.~~

C. RESOLUTION NO. R2012-18 (POLO VILLAGE II PLAT): A RESOLUTION OF WELLINGTON, FLORIDA'S COUNCIL ACCEPTING AND APPROVING THE POLO VILLAGE II PLAT FOR A 96.11 ACRE PARCEL LYING IN SECTION 16, TOWNSHIP 44 SOUTH, RANGE 41 EAST, VILLAGE OF WELLINGTON, PALM BEACH COUNTY, FLORIDA.

Mr. Schofield introduced the agenda item. Ms. Rodriguez read the resolution title. Mr. Schofield explained that this was a plat that establishes two parcels and does not confer additional development rights, and does not impact permitting noting that the permits for the barns and dressage rings had already been permitted under the existing zone. He further explained that this also has no impact on

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the Comprehensive Plan Amendment that was submitted to the Department of Economic Opportunity for review which has not yet been returned from the State which will require one more public hearing for the Comprehensive Plan Amendment, two hearings for any associated zoning text amendments and a separate hearing for the Master Plan and other uses. Mr. Schofield anticipated that process will take a minimum of four more months and then there will be three public hearings. He noted that Mr. Bill Riebe, Village Engineer, was present to address any questions.

Mr. Kurtz added that the parcel has within it a limited access easement. He said that the access points into the property will be identified through further driveway permits to the extent that those permits do not already exist. He said that they were suggesting that the approval of the plat be conditioned upon the applicant supplying him with a copy of the Equestrian Village Property Owners Association documents, and that he then finds them to be in compliance with Wellington's Code. He further stated that there is one title issue that they have to clarify noting that there is a reference to a deed by C. Oliver Wellington from the Acme Improvement District. Mr. Kurtz said that in conversations with the attorney who is doing the title work, they indicated that is not an encumbrance on the property and should not be reflected on the plat. He said that they will be sending Wellington confirmation of that.

With regard to the conditions, Vice Mayor Willits felt that Council was being asked to approve something that Mr. Kurtz had not yet approved. Mr. Kurtz responded stating that he had been supplied with the Property Owners Association documents to review. He said that he still has the question about the title. In light of that, Vice Mayor Willits asked Mr. Kurtz if he had a question or concern about Council approving this plat. Mr. Kurtz explained that the Property Owners Association documents should not be very complex and he did not anticipate any problems with them. With respect to the title work, he explained that it was only a matter of the title work being supplied to him which would result in the removal of the C. Oliver Wellington deed from the plat. Mr. Kurtz further stated that he was comfortable reviewing those items and Council conditioning the final plat approval and recording of the plat on those items being satisfactory. He said if the result was that they were unsatisfactory and they were unable to resolve those issues, then they would bring it back to Council.

Vice Mayor Willits asked if the plat would not be signed by anyone until Mr. Kurtz has approved those items in question. Mr. Kurtz responded affirmatively.

Vice Mayor Willits asked if what was included in the agenda was only back-up information since he had raised some concerns when this issue was previously discussed. He questioned whether putting stipulations on it for entry ways and where roadways could go was part of the approval of this plat. Mr. Kurtz explained that the plat has to conform with the master plan which is why it was included. He said that staff reviewed the plat and believed that it complied with the master plan requirements.

Mayor pro tem Priore asked if the ingress and egress of the master plan coincided with the Polo Village Plat. Mr. Bill Riebe, Village Engineer, said that it would once the plat was approved and recorded. He said that the petitioners could then come in and apply for a driveway permit which will be issued pursuant to the guidelines in the master plan.

Vice Mayor Willits questioned why this was named Polo Village II and asked where was Polo Village I. In response, Mr. Riebe explained that the Agenda Summary noted that this has been known as World Dressage as well as Equestrian Village; however, Polo Village II is the name that the petitioner wanted to use for this particular plat. He stated that Mr. Michael Sexton, Agent for the applicant, was present and might be able to better address this. Mr. Kurtz added that when plats are being named, they want to avoid names that have already been used so the names are wide open to the applicant.

Mr. Michael Sexton, Sexton Engineering representing the applicant of the plat, explained that the property to the north of Equestrian Village is Parcel A of Equestrian Polo Village and Complex of Palm Beach Polo and Country Club of Wellington. He explained that the name of this plat was determined a number of years ago with the White Birch property so the Polo Village II is just giving some continuity to the adjoining plat. He also noted that it includes a portion that was approved as the Commercial Equestrian Arena and the eastern portion is not part of Equestrian Village which is why they did not want to name it Equestrian Village since this is a 100 acre plat and the Equestrian Village is only 59.5 acres.

Public Comments

1. Amy Huber, 48 SW 1st Street, Miami, FL 33130, representing Charles and Kimberly Jacobs and Solar Sportsystems Inc., addressed Council. She said that she wanted to include the engineering, building and planning files for this property as part of the record. In addition, she wanted to include and incorporate all of their previous objections specifically related to Resolution No. R2012-07 and R2012-08 as well as the allegations contained in the companion complaint on those actions and the actions related to this property. Ms. Huber stated that a plat is a development order that can be challenged just as any other development order that was recognized in a Fourth DCA Case: *Graves v. Pompano Beach* which has similar factual standing as this property. In addition, she noted that the Florida Supreme Court recognized that the purpose of the plat act was to promote community planning. She further noted that Wellington's Code under Article 8 also recognizes that plat is in the coordination of land development. Ms. Huber said that because the plat was in furtherance of development that they argued and alleged was inconsistent not only with Wellington's Comprehensive Plan, but also violated the Land Development Regulations, she felt that this plat was also inconsistent with the Comprehensive Plan and violated the Land Development Regulations and was void as a matter of law. She also felt the plat lacked adequate data and analysis and there were significant traffic and stormwater issues that had not yet been evaluated or addressed. She noted that Section 8.3.4 also reviews conformity with land use, density and concurrency regulations which they previously objected to and which they felt this application failed to address. Section 8.3.5 requires a site suitability analysis to take place which the record was void of. Ms. Huber was of the opinion that the plat could not be approved as a matter of law and requested denial of the application.
2. Carol Coleman, 14224 Stroller Way. Ms. Coleman believed that they were trying to rush something through that lacked all of the elements. She said that although Mr. Kurtz indicated that these would not be challenged, she questioned why they were rushing to get this approved at this time when they lacked all of the parts. She asked if it was something that had to be done within a certain period and if that was the case, she questioned why. Ms. Coleman thought it would be an easier process to wait until they have all of the pieces before voting on it. Secondly, she said that in the master plan, they had removed the word Polo and questioned why they were requesting it to be called Polo Village II. She thought that the whole purpose was to remove polo and now it was being put back in.

Vice Mayor Wilhite asked when they were going to separate these two pieces of properties from the 59 acres since there are two different owners. Mr. Kurtz explained that the plat is the instrument that does that. Vice Mayor Wilhite then asked what the two different names would be. Mr. Kurtz said that they would be Parcel I and Parcel II of Polo Village.

Vice Mayor Wilhite questioned the infrastructure that had been included and asked if any development on this property would then accept the water management. Mr. Riabe explained that any existing water management on the property that circumscribes Polo Island tract is part and parcel of the overall development which includes the acreage as part of the plat. He said that the stormwater

management system that had been put in place was designed to accommodate the development of both of the parcels. Mr. Riebe noted that they have obtained all of the permits that were needed from the South Florida Water Management District to ensure that the stormwater management system remains intact and provides the level of service that was required.

Councilwoman Gerwig said that there appeared to be a new dedication for the water management easement and maintenance around the water, and asked if there had been plans when that was initially done. She said that it appeared that there was no underlining easement for this. Mr. Riebe said that the master stormwater management system was part of the overall Pals development. He said that this platting codified it. Councilwoman Gerwig asked if it was Wellington's obligation to know the history of this. Mr. Riebe said that they do know that the master stormwater system that is in place serves the properties. Councilwoman Gerwig said that it doesn't appear that any dedications were made. Mr. Riebe said that was correct. Councilwoman Gerwig asked if they would be getting additional information on that.

Mr. Schofield explained that the original permitting for the master water management system was done in the early 70's. He further explained that there was a modification to the master permit for the then Wellington PUD where Acme Improvement District accepted the maintenance for the lakes in that area which was done by Bink Gleason in 1975. Mr. Schofield said that through time, Wellington has taken those facilities that are purely private like this one and requires the underlying property owners to maintain the systems that benefit only them. He said that the original system was permitted, it had a maintenance entity which in many cases was Acme and Acme has no access to these. He reiterated that as these areas are platted and are done, they are then sent back to the underlying property owner who is the sole beneficiary of them. Mr. Schofield said that this lake did not provide a general benefit to Wellington residents as a whole and was not part of the system that they get credit for, but is the responsibility of the underlying property owner.

Mayor Bowen asked if it was common for Council to approve this plat with two outstanding issues that had been highlighted by Mr. Kurtz. He questioned why they hadn't been resolved as it appeared that neither issue was complicated. In response, Mr. Kurtz said that it was his understanding that the Property Owners Association documents do not have a final signoff at this point in time.

Mayor pro tem Priore questioned if the receipt of the Property Owners Association documents was critical to this resolution and were they legally required for this resolution to be approved. Mr. Kurtz said that it is required that an entity be in place that would be able to accept the dedications. He said that he was comfortable with Council approving the plat subject to the condition that those documents are submitted and they are found to be adequate after a review. With regard to how common it is to approve plats that do not have all of the elements presented at the time of approval, Mr. Kurtz said that over the last eight years, approximately 25% or 30% had some sort of condition associated with them that were not able to be signed off on that particular night.

Councilman Coates questioned whether those cases were because something had been determined the night they were being approved because he did not recall a situation where Council was presented with a plat that didn't have Mr. Kurtz' approval. He asked Mr. Kurtz what was Council's role with regard to the approval of plats. He said that it was his understanding that if Mr. Kurtz and staff deemed the plat to meet Wellington's regulations, Council did not have much of a role except to accept their recommendation and then to approve. In response, Mr. Kurtz said that Council always has the ability to question staff and sometimes they do point out things staff has not thought of. He said that for everyone the approval of a plat is a ministerial function and it is whether or not it meets the requirements of the code.

Councilman Coates said that he personally did not have a problem with the approval of the plat which he felt was consistent with what was decided, however, he wanted to ensure that everything with respect to this particular project proceeded in accordance with how Wellington has historically conducted business. He felt if they were doing something unusual or expediting the timing in a fashion that wasn't done for other applicants or plats, he wanted to know that. He said it appeared to him that perhaps they were doing that and putting it on a faster track. Councilman Coates thought that Mr. Kurtz would normally require all of the documents prior to it coming to Council. Councilman Coates questioned Item No. 1 Compliance with Wellington Land Development Regulations. Mr. Kurtz explained that was a catch-all provision that Mr. Riebe has been including in the most recent plat approvals.

Councilwoman Gerwig asked if the water management area benefited Polo Island specifically the existing canal system that encloses an island. Mr. Sexton said that a portion of it is. Councilwoman Gerwig asked if they had a maintenance area included in their portion of the plat. Mr. Sexton explained that there was a maintenance area on their plat. He said that the existing lake system that surrounds Polo Island and is shown as part of the drainage dedication on this plat is part of the previous permit which he believed was the Lake 47 on the old South Florida Water Management District that Mr. Schofield had earlier addressed. He said that all of the other properties that abut this lake have been already platted, and when they platted them they placed drainage easements on them. He noted that this plat was not platted so as part of their platting process, they were providing those easements and providing the Property Owners Association documents to maintain those easements. Mr. Sexton explained that they have gone through the SFWMD permitting showing that the SFWMD permit modifications are consistent with the approvals that were given to the system that they were connecting to.

Mayor Bowen questioned when the Property Owners Association document and the title clarity were expected. He suggested if it was anticipated to only be a short period of time, that this be postponed to the next Council meeting. Mr. Kurtz said that the timing was such that it should be a matter of days noting that it was put on the agenda with the anticipation that it could have been resolved prior to the Council meeting.

Councilman Coates said that he did not want Council to be used as a political instrument in light of the present climate and he didn't want anyone accused of advancing this on a faster track than it would ordinarily take.

A motion was made by Councilman Coates, seconded by Vice Mayor Wilhite, and unanimously passed (5-0) to table Resolution No. Resolution No. R2012-19, approval of the Polo Village II Plat, to the next Wellington Council Meeting scheduled for March 13, 2012.

9. PUBLIC FORUM

10. ATTORNEY'S REPORT

MR. KURTZ: No Report

11. MANAGER'S REPORT & UPDATES

MR. SCHOFIELD: Mr. Schofield presented the following report:

NOTICE OF INTENT TO SUSPEND DEVELOPMENT ORDERS


In accordance with Chapter 9 of the Village of Wellington Unified Land Development Code (the "ULDC"), "Compliance with Time Limitations and Conditions of Approval," subsection 5.9.3.A.3., the Village of Wellington hereby issues its notice of intent to suspend development orders for the property known as Wellington Country Place Planned Unit Development located in the eastern half of section 20 and all of section 21.

The legal description of the subject property is as follows: being the East 1/4 of Section 20, Township 44 South, Range 41 East and Section 21, Township 44 South, Range 41 East; less that part of the Southwest 1/4 of said Section 21 described as follows: beginning at the Southwest corner of said Section 21; thence North 00° 51' 13" East, along the West line of said Section 21, a distance of 1391.0 feet; thence South 89° 17' 17" East, a distance of 1490.0 feet; thence South 00° 51' 13" West, parallel with the West line of said Section 21, distance of 1384.26 feet, to the South line of said Section; thence Westerly along the South line of said Section 21, a distance of 1490.02 feet to the Point of Beginning. Less plats recorded as follow: Plat book 37, pages 123-124; Plat book 38, page 190-191; Plat book 39, page 19-22; Plat book 56, pages 87-88; Plat book 60, pages 143-144; Plat book 61, pages 112-113; Plat book 61, pages 114-115; Plat book 64, pages 187-189; Plat book 64, pages 193-195; Plat book 64, pages 190-192; Plat book 66, page 46; Plat book 66, page 98-99 and Plat book 68, pages 156-157.

Time certain conditions of approval contained in Resolution No. R2012-08, involving the Equestrian Village Compatibility Determination, have not been timely met by the property owner. The specific time certain conditions of approval that have not been completed follow: Condition No. 3 of Resolution R2012-08 which requires the property owner to apply for a setback variance for the existing cell tower by May 1, 2012 and Condition No. 35 which requires that the proposed plat of the 59.3 acre property be recorded by March 31, 2012. Pursuant to Section 5.9.3 of the ULDC, a status review of this project will be conducted by the Village Council on May 22, 2012. Until the review is completed by the Village Council, no new development orders shall be issued by the Village of Wellington for this property. After its review, the Village Council has the discretion to grant an extension of time to comply, modify or affirm the approval condition, or to rescind the project approval.

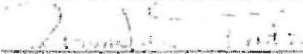
Until this review is completed and action taken to release the property from this notice, the Village of Wellington will not issue any new development orders for the subject property. Any questions about this notice should be directed to the Village of Wellington Planning, Zoning and Building Department.

Dated this 4th day of May, 2012



ROBERT E. BASEHART
Growth Management Director

STATE OF FLORIDA)
COUNTY OF PALM BEACH)

SWORN TO and subscribed before me this 4th day of May 2012, by ROBERT E. BASEHART, who is personally known to me or who produced _____ as identification and who did/did not take an oath.

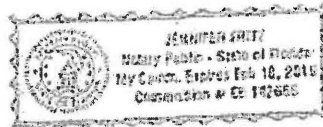


NOTARY PUBLIC, STATE OF FLORIDA



Print, Type, or Stamp Name of Notary

My Commission Expires:



CHAPTER 9. - COMPLIANCE WITH TIME LIMITATIONS AND CONDITIONS OF APPROVAL

Sec. 5.9.1. - General.

Sec. 5.9.2. - Application.

Sec. 5.9.3. - Procedures.

Sec. 5.9.4. - Supplementary provisions for classes of development orders.

Sec. 5.9.1. - General.

Purpose and Intent.

- A. It is the intent of the Village Council to provide for the public health, safety and welfare by establishing procedures for mandatory review of certain development orders. Chapter 163, part II, Florida Statutes, entitled "Local Government Comprehensive Planning and Land Development Regulations Act" provides that all development regulations shall be consistent with the adopted comprehensive plan. Chapter 163 further provides that public facilities and services shall be available concurrent with the impacts of development. Pursuant to Chapter 163, the Village's Comprehensive Plan requires that the applicant for all development orders or permits must demonstrate that the necessary public facilities and services are available. To ensure the availability of facilities and services to proposed developments, it is necessary that developments which have reserved capacity proceed in the prescribed time. Systematic monitoring and subsequent review of approved development orders will help implement the goals within the comprehensive plan by:
1. Preserving the availability of public facilities and services for proposed development by removing capacity reserved for inactive development.
 2. Minimizing the creation of an artificially inflated inventory of residential, commercial, and industrial development.
 3. Enhancing the value and use of land in the Village by identifying and providing a system to eliminate obsolete approvals which distort the official land use inventory.
 4. Encouraging compliance with improved performance and site design standards by providing a system whereby approved, but unbuilt, developments are subject to periodic review.
- B. It is the intent of the Village Council to ensure compliance with the conditions of development orders and with specific time requirements for the completion of activities associated with said approvals or with this Code. The Village Council recognizes that unforeseen factors may interfere with the established schedule. This section creates an administrative program to monitor and provide

extensions for activities which must be completed within a certain time period pursuant to a development order or pursuant to this Code.

- C. The Village Council recognizes that development is a complicated process. Despite efforts on the part of developers to proceed according to plans, unforeseen factors may interfere with the schedule of development and compliance with conditions of approval. Administrative reviews must be flexible enough to accommodate unforeseen circumstances. The review procedure created in this section establishes a flexible system for administrative review and monitoring of the progress of development and approval of time extensions.
- D. To meet the intent of this section, the Village Council may review development orders issued prior to the adoption of this code for compliance with the time requirements of this code and for compliance with conditions of approval.
- E. When the Village Council or any provision of this Code has imposed a condition of development approval or time limit for the completion or duration of a specific activity or phase of development, the property owner shall be responsible for compliance.

Sec. 5.9.2. - Applicability.

- A. This section shall apply to:
 - 1. All development orders with a time requirement for completing one or more actions as identified in Table 5.9-1 or in the development process as required by specific sections of this code.
 - 2. All development with conditions of approval.
- B. The following are exempt from this section:
 - 1. Any development order for rezoning to the PG-Public Ownership District which does not have an approved conditional use.
 - 2. Any development order initiated by staff at the direction of the Village Council after a review pursuant to this section.
 - 3. Any development order for a rezoning of a single lot to a residential zoning district that corresponds to the minimum density permitted in the Comprehensive Plan Future Land Use designation for that lot, provided there is no concurrency reservation or concurrency exemption for the property.

For development orders which are subject to the requirements of this section, the time limitations shall apply to those approved prior to or subsequent to the effective date of this amendment.

Sec. 5.9.3. - Procedures.

- A. Suspension. Suspension of development orders upon failure to comply with time requirements or failure to comply with condition of development approval.
 - 1. Upon expiration of any time period established by this Code or for any failure to comply with a condition of development approval, no new development orders affecting the property shall be issued by The Village until a final determination is made by the planning and zoning director, or designee, or Village Council pursuant to subsections 5.9.3.D. and 5.9.3.E. herein. There will be no suspension of development rights if the only recommendation in the status report to the Village Council is to delete a condition of approval. This suspension of

development rights shall not preclude the property owner from filing a new petition for the subject property to amend or supersede an existing development order, or the Village Council or Planning, Zoning and Adjustment Board from approving this petition.

2. This suspension of development rights shall have the following effect on new petitions and code enforcement actions:
 - a. If the property owner files a new petition, no new development orders shall be issued until the completion of the zoning process except the development order which approves the petition.
 - b. If the Village Council directs staff to cite the property owner for violating the provisions of the Code, no new development orders shall be issued until the alleged violation has been ruled upon by the code enforcement board, and any enforcement action is completed, or penalty is satisfied. This shall not, however preclude compliance with the specific condition cited in the status report after the Village Council or Planning, Zoning and Adjustment Board has directed the Code Enforcement Division to cite the property owner for noncompliance with that condition.
3. Upon the expiration of any time period or upon reasonable cause to believe that a condition of development approval has been violated, a document shall be filed with the clerk of the circuit court to be placed with the records governing title to the affected property except as provided in subsection 5.9.3.A.a. herein. This document may apply only to that portion of the property related to the expired time period, or any condition violated. The document shall give record notice that:
 - a. A condition of development has been violated or a time certain activity has not proceeded as required;
 - b. A review of the project will be conducted pursuant to terms of this section;
 - c. Until the review is completed, no new development orders shall be issued by The Village; and
 - d. Such other information as may be reasonable and necessary to afford adequate record notice of the effect of this section on the rights of property owners.
4. If the Village Council, or the executive director approves further development pursuant to subsection 5.9.3.B. or 5.9.3.E., herein, a second document shall be filed with the clerk of the circuit court to be placed with the records governing title to the property indicating:
 - a. That the rights to develop have been restored; and,
 - b. Such other information as may be reasonable and necessary to afford adequate record notice of the effect of this section on the rights of property owners.

This document shall only be recorded upon payment of all status report fee as established from time to time by the Village Council. The status report fee may be waived if: (1) the property owner is a government agency; or (2) the property owner is prevented from complying by a government-caused delay or by litigation that would prevent action by the property owner to bring the approval into compliance.

- B. Administrative extension of time,
 - 1.

The owner of record, the current agent, or mortgagor demonstrating a secured interest in the property which is not being protected by the owner may file an application with the executive director of planning, zoning and building for an administrative extension of time. The application shall be made upon such forms and in such a manner, including payment of fees, as prescribed by the Planning, Zoning and Building department.

2. Upon the filing of an application for an administrative extension of time, the executive director, or other person designated by this code, may grant an extension of time to comply with a requirement. A time extension shall commence upon the expiration of the date to comply with the time requirement, or the expiration of the last extension, whichever is applicable.

The maximum duration of an administrative time extension is as follows:

- a. Development order. Table 5.8-1 provides the maximum length of each administrative time extension for each development order governed by this Code.
 - b. Conditions of approval. Twelve (12) months shall be the maximum. Subsequent applications may be filed; however, the total administrative extensions approved shall not exceed twenty-four (24) months except when government caused delays can be documented as the reason for failure to meet required deadlines. The executive director, or a designee, shall grant such extensions as necessary to offset government-caused delays, not necessarily equal to the time of delay. It is the responsibility of the property owner to notify staff in writing of the delay however, no application or fee will be required. If the Village Council has previously approved a time extension, any administrative extensions of time shall not extend more than twenty-four (24) months from the original date for compliance except when there have been government-caused delays.
 - c. Posting of Performance Surety for a Conditional certificate of Concomerary Reservation. A one-time six-month administrative time extension shall be the maximum.
3. In reviewing applications for administrative time extensions for requirements other than conditions of approval, the executive director or designee shall approve a time extension if the development order is:
 - a. Consistent with the Village Comprehensive Plan;
 - b. Consistent with the Land Development Regulations; and
 - c. Complying with the Countywide Traffic Performance Standard.
 4. In reviewing applications for administrative time extensions for compliance with conditions of approval, the executive director, or designee, shall consider the following:
 - a. Attempts by the applicant to complete the unfulfilled condition;
 - b. The reliance by other parties on the timely performance of activity;
 - c. Any changed circumstances which may have interfered with the ability of the property owner to meet the time certain requirement;
 - d. Actions of other parties that may have precluded compliance;
 - e. The existence of extraordinary mitigating factors;
 - f.

Compliance with the review criteria in subsection 11.4.3.E criteria 1- 5, above, for posting of performance surety for a conditional certificate of concurrency reservation.

5. When the extension of time is for the payment of fees, the amount due shall increase by an interest payment equal to twelve (12) percent a year. If the extension covers a period less than a year, then the interest shall be prorated.
 6. When the executive director or designed approves an extension of time for completion of a time certain requirement, he/she may require the property owner to guarantee the completion by furnishing a cash deposit, letter of credit, or surety bond.
- C. Appeal. An appeal of a denial of an administrative time extension may be made to the Village Council. An appeal shall be made upon forms prescribed by the department within thirty (30) days of the mailing of the notice that the request for an administrative extension has been denied. The appeal shall be set on the zoning authority agenda within sixty (60) days of receipt by the department. The Village Council shall either affirm the decision of the department or grant an extension of time. An extension of time may be granted only upon a finding by the Village Council that the requirements of subsection 5.9.3.B.3. or 5.9.3.B.4., as appropriate, have been satisfied.
- D. Failure to comply with conditions or time requirements.
1. In the event that a property owner fails to comply with a time requirement and has not received a time extension or a property owner violates a condition of approval, staff shall advertise a status report public hearing for the agenda of the Village Council or Planning, Zoning and Adjustment Board. The hearing shall be held within ninety (90) days of the filing of the notice required by subsection 5.9.3.A.1. herein. Unless the property owner utilizes the provisions of subsection 5.9.3.D.1. below, staff may delay the scheduling of the status report public hearing if, prior to the most recent deadline for compliance:
 - a. The property owner files for an amended or new development order which may affect the time requirement or any condition being violated. If the new petition is approved and the time requirement has not been affected, or if the petition is denied, staff will place the status report on a Village Council or Planning, Zoning and Adjustment Board agenda within sixty (60) days; or
 - b. Staff is notified by the property owner that there is a deadline to commence development or record a plat, and that either a complete building permit application has been submitted, or technical compliance for a plat has been received, as appropriate, and development will commence, or the plat will be recorded, within ninety (90) days of the deadline. The suspension of development orders as required by subsection 5.9.3.A. will only occur if development has not commenced, or a plat has not been recorded within the ninety-day time period.
 2. The status report shall contain a description of the development order, a summary of the background and current status of the development, including any documentation provided to staff of efforts to comply with the requirement, or circumstances beyond the control and cause of the property owner, other than economic conditions, which have prevented compliance; a description of any uncompleted conditions or time certain requirements; a review of criteria set forth in subsection 5.9.3.B.4. for status reports prepared for failure to comply with a

condition of approval, as well as a determination of whether the development order:

- a. Is consistent with the Village Comprehensive Plan;
- b. Is consistent with the Land Development Regulations; and
- c. Complies with the Countywide Traffic Performance Standard.

Based on the above factors, staff shall make a recommendation for one (1) or more of the actions identified in subsection 5.9.3.E.2. herein.

3. An administrative status report fee shall be established by the Village Council in order to provide for this process.
4. Consideration of all actions, except a rezoning, permitted by Sec. 5.9.3.E.2., shall occur in the following manner:
 - a. Public hearing. At least one (1) public hearing shall be held by the Planning, Zoning and Adjustment Board or by the Village Council, as applicable.
 - b. Mail notice. The owner of record shall be notified in writing of the executive director's status report and recommendation to the Village Council or Planning, Zoning and Adjustment Board. Written notice shall consist of a letter sent at least fourteen (14) calendar days prior to the hearing by certified mail, return receipt requested, to the last known address of the owner of record as it appears in the official records of the Palm Beach County Property Appraiser's Office. Proof of this receipt shall be presented at the hearing. In the event that the owner fails to acknowledge receipt of mail notice or the notice is returned unopened, newspaper publication, as set forth below, shall be deemed sufficient notice. Written notice shall include:
 - I. A statement that the time period has expired or that a condition of approval has been violated and that the development shall be subject to review;
 - II. The executive director's recommendation to the Village Council or Planning, Zoning and Adjustment Board;
 - III. A statement that review may result in one (1) or more of the actions identified in subsection 5.9.3.E.2., herein;
 - IV. Notice of the date, time, and place of the hearing before the Village Council or Planning, Zoning and Adjustment Board, during which the report and recommendation of the executive director will be heard;
 - V. A statement of the owner's right to appear and to present relevant information to rebut or to supplement the report of the executive director; and
 - VI. Such other information as may be necessary and appropriate to accomplish the goals of this section.
 - c. Newspaper Publication. Notice of the hearing shall be published in a newspaper of general circulation in accordance with Sec. 125.66(2)(a). Notice shall be published at least ten (10) days prior to the hearing.
5. Consideration of all re-zonings on properties less than ten (10) contiguous acres, by the Village Council, shall occur in the following manner:
 - a.

- Public hearing. The Village Council shall hold at least one (1) public hearing on a proposed amendment to the boundaries of the Future Land Use Map.
- b. Mail notice. The owner of record shall be notified in writing of the executive director's status report and recommendation to the Village Council. Written notice shall consist of a letter sent at least thirty (30) calendar days prior to the hearing by certified mail, return receipt requested, in accordance with Section 125.66(4)(a), Fla. Stat. In the event that the owner fails to acknowledge receipt of mail notice or the notice is returned unopened, newspaper publication, as set forth below, shall be deemed sufficient notice. In addition to the requirements of Sec. 125.66(4)(a), Fla. Stat., written notice shall include the items as stated in Sec. 5.13.D.4.b i-vi above.
 - c. Newspaper publication. In addition to the notice mailed to the owner of record, notice of the hearing shall be published in a newspaper of general circulation in accordance with Sec. 125.66(2) of the Fla. Stat. Notice shall be published at least ten (10) days prior to the hearing.
6. Prior to consideration of all rezoning on properties of ten (10) or more contiguous acres by the Village Council, notice to the owner of record and advertisement of the proceedings shall occur in the following manner:
- a. Public hearing. The Village Council shall hold two (2) public hearings on a proposed amendment to the boundaries of the Future Land Use Map when the amendment would affect ten (10) or more contiguous acres of total unincorporated land area. The second public hearing shall be held at least ten (10) calendar days after the first public hearing in accordance with Sec. 125.66(4)(b)1., of Fla. Stat.
 - b. Mail notice. The owner of record shall be notified in writing of the executive director's status report and recommendation to the Village Council and shall be noticed in accordance with Section 125.66(4)(b)3., Fla. Stat. Written notice shall consist of a letter sent at least thirty (30) calendar days prior to both the first and second hearing by certified mail, return receipt requested, to the last known address of the owner of record as it appears in the official records of the Palm Beach County Property Appraiser's Office. In the event that the owner fails to acknowledge receipt of mail notice or the notice is returned unopened, newspaper publication, as set forth below, shall be deemed sufficient notice. Written notice shall include the items as stated in Sec. 5.13.D.4.b i-vi above.
 - c. Newspaper publication. In addition to the notice mailed to the owner of record, notice shall be published in a newspaper of general circulation in the County. Notice shall be published once for each hearing; the first publication shall be at least seven (7) calendar days prior to the date of the first hearing and the second publication shall be least five (5) calendar days prior to the second hearing.
7. The notice shall state the date, time, and place of the hearing; the proposed action; and the place within the Village where the status report and recommendation may be inspected by the public. The notice shall advise that interested parties may appear at the hearing and be heard with respect to the report and recommendation. A copy of such notice shall be kept available for

public inspection at the Planning, Zoning and Building Department during regular business hours.

E. Decision by the Village Council or Planning, Zoning and Adjustment Board.

1. The Village Council or Planning, Zoning and Adjustment Board shall consider the factors enumerated in subsection 5.9.3.D.2., above, and the recommendation of the department.
2. After deliberation, the Village Council or Planning, Zoning and Adjustment Board shall take one (1) or more of the following actions:
 - a. Adopt a resolution which will rezone the property to an appropriate zoning district.
 - b. Adopt a resolution which will revoke the approval for the conditional use or special exception.
 - c. Adopt a resolution which will impose a limit such that no development order shall be issued permitting construction which exceeds entitlement density or entitlement intensity as established by the Land Use Element of the Village Comprehensive Plan.
 - d. Adopt a resolution which will impose additional or modified conditions or permit the property owner to initiate a petition to add or modify conditions, as directed by the board. New or modified conditions may include bringing the development into conformity with current codes and regulations.
 - e. Direct staff to cite the property owner for violating the provisions of this Code.
 - f. Grant a time extension for a period not to exceed twenty-four (24) months during which time the property owner shall comply with the time requirement. The term of the time extension shall commence upon the expiration of the date to complete the time certain activity, or the expiration of the last extension, whichever is applicable. When the board approves an extension of time for the payment of fees, the amount due shall increase by an interest payment equal to twelve (12) percent a year. If the extension covers a period less than a year, the interest shall be prorated.
 - i. Posting of surety for a conditional certificate of concurrency. Grant a one-time six-month time extension for conditions of approval requiring the posting of surety. The term of the time extension shall commence upon the expiration of the date to post surety. In no case shall the total time to post surety exceed twelve (12) months from the date of approval of the development order which imposed the condition to post surety.
 - ii. All other conditions of approval. Grant a time extension for a period not to exceed twenty-four (24) months during which time the property owner shall comply with the time requirement. The term of the time extension shall commence upon the expiration of the date to complete the time certain activity, or the expiration of the last extension, whichever is applicable. When the Board approves an extension of time for the payment of fees, the amount due shall increase by an interest payment of equal to twelve (12) percent a year. If the extension covers a period less than a year, the interest shall be prorated.

- g. Amend or revoke the development order or map amendment for the undeveloped or unplatted portion of the project.
 - h. Exempt from further review of any development order which rezoned property to a district which corresponds to the density or intensity permitted by the Comprehensive Plan Future Land Use designation, provided there is no concurrency reservation or exemption for the property. This exemption may be applied to any advertised status report after adoption of this amendment.
 - i. Deny or revoke a building permit; leave a stop work order; deny a Certificate of Occupancy on any building or structure; deny or revoke any permit or approval for any developer-owner, commercial-owner, leases, or uses of the subject property.
- 3. If the Village Council or Planning, Zoning and Adjustment Board fails to act on staff recommendations within the prescribed time period, or if the executive director or designee grants an administrative time extension, the issuance of new development orders shall immediately resume.
 - 4. The decision of the Village Council or Planning, Zoning and Adjustment Board shall be rendered within sixty-five (65) days of the originally advertised public hearing, provided that the property owner has not requested a postponement of the matter. A postponement approved at the request of the property owner may not exceed twelve (12) months from the due date for compliance.
- F. Expiration of time extensions granted by the Village Council. In the event that the property owner has not complied with the condition of development approval or time certain activity at the expiration of a time extension, the development order shall be subject to the requirements of subsections 5.9.3.B., or 5.9.3.D. and 5.9.3.E. herein, as appropriate.

Sec. 5.9.4 - Supplementary regulations for classes of development orders.

- A. General. For specific types of development approvals, this section:
 - 1. Designates the next required development permit or action and minimum time period for receipt of permit or commencement of action;
 - 2. Provides the maximum time to obtain permit or commence action;
 - 3. Provides the maximum length of an administrative time extension for commencing next required action or receiving the next required development permit;
 - 4. Designates the staff person who may approve an administrative extension of time; and
 - 5. Provides for action upon failure to comply with the time requirement without an approval time extension.
- B. Classes of development approvals. Unless otherwise established in the development order, the time frames provided in Table 5.9-1 apply. Permitted time frames do not change with successive owners.
- C. Effect of phasing on time frames for receipt of a required permit or commencement of a required action.
 - 1. Planned Unit Development Districts. The development order and master plan or final subdivision plan for the planned unit development may provide for phasing. If the development order specifies phasing, a master plan shall provide the order

in which plats will be recorded. Table 5.8-1 provides time requirements for recording plats.

2. Conditional uses or Planned Development Districts other than Planned Unit Development Districts. The Final site plan/Final Subdivision plan for the conditional use or planned development may provide for phasing. If the Final site plan/Final subdivision plan specifies phasing, it shall provide a phasing order in which development will commence. Table 5.8-1 provides the maximum number of phases permitted for each type of development order. Each phase must contain a minimum of twenty (20) percent of the land area unless otherwise approved in the development order approved by the Village Council or Planning, Zoning and Adjustment Board. Table 5.8-1 also provides time requirements for commencement of development.

D. Effect of modification to a development order on the time requirements of this section.

1. Planned development district or conditional use:
 - a. Administrative modification of site plan does not alter original time certain requirement.
 - b. Village Council modification to development orders may include a condition of approval which provides a new time for commencement of development or to record a plat (up to the maximum time permitted for a new development order) if the modification is determined to be a substantial change in land use as defined in Sec. 3.2.
2. Final site plan or final subdivision plan may be modified by the Development Review Committee. A modification, unless determined to be materially different by the DRC, shall not establish a new time to commence development or record a plat.

Table 5.8.1
Time Limitations of Development Order For Each Phase

TIME LIMITATIONS OF DEVELOPMENT ORDER FOR EACH PHASE					
Type of Development Order	Maximum Number of Phases	Next Required Action or Development Order	Maximum Time to Receive Development Permit or Commence Development	Maximum Length of Administrative Time Extension ^a	Action Upon Failure to Comply With Time Requirement Without an Approved Time Extension
Res zoning	2	Commence development ^b	three (3) years ^c	twelve (12) months	Village Council review pursuant to subsections C.1 and C.5 herein
Conditional Uses Class "A" and Class "B"	2	Commence development or use Conditional Use if no	three (3) years ^c	twelve (12) months	Pursuant to subsections C.4 and C.5 herein Class A -

			construction is required ¹			Village Council review; Class B - Zoning Commission review
Planned Development District: Non Planned Unit Development		3	Commence development	three (3) years ²	twelve (12) months	Village Council review pursuant to subsections C.4 and C.5 herein
Planned Development District: Planned Unit Development		no maximum	Record plat	three (3) years ²	no extensions permitted	Village Council review pursuant to subsections C.4 and C.5 herein
Development Orders Which at the Time of Certification are not Associated With any Other Development Order Which is Subject to the Requirements of Section 5.6 (Those Listed Above):	Site Plan	2	Commence development	four (4) years ²	no extensions permitted	Plan null and void for the undeveloped phases of a site plan, and expiated phases of a subdivision plan.
	Final Subdivision Plan: Non-Residential	2	Commence development	four (4) years ²		
	Final Subdivision Plan: Residential	no maximum	Record plat	three (3) years ²		

Notes for Table 5.6.1

1. Commencement of development shall consist of:
 - a. Receipt of a building permit and first inspection approval for a) the entire development, or b) all of the next phase if phasing is provided by the development order and final Master Plan pursuant to subsection 5.9.4.C.2 herein; or
 - b. The initiation of significant site improvements such that the improvements would only permit the development of the approved project, and any other pattern of development would require extensive changes to the installed improvements.
- Commencement of development shall not consist of:
 - a. The dividing of land into parcels, unless the determination of commencement is to be made for property with straight residential zoning and this division is accomplished through the recordation of a plat or plat waiver; or
 - b. Demolition of a structure; or
 - c.

Deposit of refuse, solid or liquid waste, or fill on the parcel unless the development order is exclusively and specifically for such; or

d. Clearing of land.

- 1 From resolution adoption date for first phase, and from date of commencement of development of last phase, or last plat recordation date, for subsequent phases.
- 2 From plan certification date for first phase, and from date of commencement of development of last phase, or last plat recordation date, for subsequent phases.
- 3 All administrative time extensions listed in this table are to be approved or denied by the Director of Community Services.

7. B

**WELLINGTON VILLAGE COUNCIL
AGENDA ITEM SUMMARY****AGENDA ITEM NAME:** STATUS REPORT FOR EQUESTRIAN VILLAGE COMMERCIAL EQUESTRIAN ARENA COMPATIBILITY DETERMINATION**ACTION REQUESTED:** Discussion ☒ Approval ☐**BUDGET AMENDMENT****REQUIRED:** Yes ☐ No ☒ See Below ☐**PUBLIC HEARING:** Yes ☒ No ☐ **QUASI-JUDICIAL** ☒**FIRST READING** ☒**SECOND READING** ☐**REQUEST:** Review of the project in light of the failure of the applicant to comply with time certain conditions of approval and decision whether to grant extensions or revoke approval.

EXPLANATION: The Commercial Equestrian Arena at the Equestrian Village was approved by Council in February of 2012 through the passage of Resolution 2012-08. This staff initiated request is for a "Status Review" and Council action consistent with the provisions of Sec. 5.9.3.D of the Land Development Requirements. This Code provision provides a required review and decision making process for applications that are in violation of conditions of approval that impose time-certain requirements for implementation. Resolution R2012-08 which approved Petition No. 2011-033 CU1 contains 37 conditions of approval, eight of which contain time limits for implementation. Currently, Condition #35, which requires that the 59.3 acre property shall be platted prior to March 31, 2012, is in default. However, since the approval of this project was reliant on a companion application to amend the Wellington PUD Master Plan (approved under Resolution R2012-07) and the original approval for that amendment has been rescinded, the subject Equestrian Arena approval cannot stand. Under the circumstances, a vote by Council to revoke the Commercial Equestrian Arena approval should be made. The entire file for this project is incorporated into the record of this proceeding. A CD is attached which consists of material that had been submitted by Holland & Knight, Shubin & Bass and Rosenbaum Mollengarden for the May 22, 2012 and June 12, 2012 meetings pertaining to this matter.

LEGAL SUFFICIENCY: Yes**FISCAL IMPACT:** N/A**VILLAGE GOAL:** Responsive Government

RECOMMENDATION: Revocation of the Compatibility Determination. The rescinding of the Master Plan approval has negated the Commercial Equestrian Arena approval. Staff recommends that Council revoke the approval for a Commercial Equestrian Arena granted under Resolution R2012-08.



Council

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

Manager
Paul Schofield

June 19, 2012

Mark Bellissimo, Managing Partner
Far Niente Stables, LLC
Polo Field One, LLC
Stadium North, LLC
Stadium South, LLC
14440 Pierson Road
Wellington, FL 33414

**SUBJECT: EQUESTRIAN VILLAGE COMPATIBILITY DETERMINATION, VILLAGE OF WELLINGTON
RESOLUTION NO. R2012-08- FAILURE TO COMPLY WITH TIME CERTAIN APPROVAL
CONDITIONS.**

Dear Mr. Bellissimo:

This letter is to provide official notification/reminder of the continuation Village Council Status Review for the above referenced project, consistent with the provisions of Sec. 5.9.3.D. of the Wellington Land Development Regulations. Specifically, Condition #35 of Resolution R2012-08 which requires that the property owner Condition #35 which requires the proposed plat of the 59.3 acre property shall be recorded by March 31, 2012 has not been met. Further, the revocation of the companion PUD Master Plan Amendment approval on May 22, 2012 has left the subject Compatibility Determination approval without the necessary foundation approval, leaving the project without a legitimate basis.

This matter will be placed on the Village Council agenda scheduled for July 10, 2012. The Village Council has discretion to grant an extension of time to comply, modify or eliminate the approval condition, or to rescind the project approval. Staff believes the appropriate action will be to revoke the approval granted under Resolution R2012-08. You and/or your representative(s) will have opportunity to provide testimony.

Further, please be advised that in accordance with the provisions of Sec. 5.9.3.A.1, the ability to obtain new development orders on the subject property has been suspended until this Status issue has been resolved. A copy of the revised Staff Report is attached for your review.

Please do not hesitate to contact me if you have any questions relative to this matter.

Very truly yours,

Robert E. Baschert, AICP
Growth Management Director

Cc: Paul Schofield, Village Manager
Jeff Kurtz, Village Attorney
David Flinchum, Planning & Zoning Manager
Jacek Tomasik, Building Official
Peter M. Brant, President, White Birch Farm, Inc.

**PROJECT DESCRIPTION**

Petition Number: 2011-033 CU1/Compatibility Determination (Status Report)

Original Resolution: R2012-08, Adopted February 2, 2012

Project Name: Equestrian Village Commercial Equestrian Arena Compatibility Determination

Applicant: Equestrian Sports Productions, LLC

Owners: Far Niente Stables II, LLC
Polo Field One, LLC
Stadium North, LLC
Stadium South, LLC
Mark Bellissimo, Managing Partner
14440 Pierson Road
Wellington, Florida 33414

White Birch Farm, Inc.
Peter M. Brant, President
80 Field Point Road
Greenwich, CT. 06830

Location: Northeast corner of South Shore Boulevard on the north side of Pierson Road

PCNs: 73-41-44-16-00-000-5030, 5040, 5050, 5060 and 5070

Acres: 59.3 acres.

Original Approval: Compatibility Determination for a Commercial Equestrian Arena in the Urban Service Area with approval conditions to mitigate potential incompatibility issues.

Background:

The 59.3 acre site was granted approval for a Commercial Equestrian Arena pursuant to Resolution 2012-08 (a copy of which is attached). The applicant operated the subject site as a Dressage event facility during the 2011/2012 equestrian season based on a Seasonal Special Use Permit issued by the Village. The purpose of processing the Compatibility Determination application that was approved under Resolution R2012-08 was to obtain an approval to operate the facility perpetually,

without the need to obtain annual Special Use permits, and to ultimately allow more permanent structures, as opposed to using tents and other nonpermanent structures for events. The approval was granted on February 2, 2012, subject to 37 conditions of approval.

The Commercial Equestrian Arena approval was subject to 37 conditions, including condition number 35 that required a plat for the 59.3 acre property be recorded by March 31, 2012. At the February 28, 2012 Council meeting, the Village Council refused to approve the proposed plat for the 96.3 acre parcel (which includes the Commercial Equestrian Arena site) as the plat approval was the subject of several conditions (copy of minutes of February 28th meeting are attached). The approval of the plat was tabled to the March 13, 2012 meeting, however, as of March 13th the property owners had not submitted an executed copy of the plat mylar with all of the requisite owner and mortgagee signatures. Therefore, the plat was not placed back on a Council agenda for final approval until May 22, 2012. In the interim, the then existing title questions have been resolved to the satisfaction of the Village Attorney and the POA documents have been approved for recordation. The site plan on which the plat is based has been approved by the DRC.

The property owners did not request an extension of time in order to comply with the platting condition prior to March 31st. Pursuant to Section 5.9.1.E of Wellington's Land Development Regulations (LDR) the property owner is responsible for timely compliance with any condition of development approval. In the absence of compliance and the absence of a timely filed request for extension of time, suspension of the development order is appropriate in accordance with Section 5.9.3 of the LDR. A copy of the suspension order, to be recorded in the official records of Palm Beach County, is attached. In order to address the situation and give the owner the opportunity to make a presentation to Council, a review of the matter and public hearing was scheduled for Council's consideration at their May 22, 2012 meeting. That hearing was postponed to June 12th and then recessed until July 10th. However, at the May 22, 2012 Council meeting the companion PUD Master Plan Amendment approved under Resolution R2012-07 was revoked. Further, the Plat approval was removed from the agenda, because it became inconsistent with the Master Plan when the latest approval was revoked. The Master Plan Amendment revocation has also rendered the subject application inconsistent and unable to stand.

Site History:

In 1972, the Wellington Planned Unit Development (PUD) was originally approved by Palm Beach County. The PUD consists of 7,562 acres and currently has an approval for 14,648 dwelling units with an overall density of 2.0 dwelling per acre. The property was originally the center of the Polo industry started by Mr. William Ylvisaker back in the 1970's. The site consisted of the original Polo Stadium with four polo fields with Fields 1 & 2 west of Polo Island and Fields 3 & 4 east of Polo Island. In the early days, the polo fields were frequently used for matches and several recreational community events. After Wellington's Incorporation, polo activity was limited and in 2007 the original Polo Stadium was demolished. Polo is now being played competitively at the new International Polo Club on the west side of 120th Avenue. In recent years Fields 1 & 2 have been used for Steeplechase competition. In 2011-12, pursuant to a special use permit, the site was utilized for dressage events and stabling.

On December 31, 1995, Wellington was incorporated and on January 19, 1999 Wellington's Comprehensive Plan was adopted. The Comprehensive Plan included an Equestrian Element which required Wellington to create an Equestrian Preserve Area boundary. Between June 2006 and October 2007 according to the Palm Beach County Public Records Warranty Deeds several of these properties were individually sold to Far Niente Stables II, Polo Field One, LLC, Stadium North, LLC

and Stadium South, LLC. A preliminary plat has been recently submitted to combine these properties. The property is within the Equestrian Preserve Area Sub Area D.

The Commercial Equestrian Arena approval granted on February 2, 2012 incorporates the activities previously approved with Special Use Permit dated April 28, 2011 for the 2011/2012 Dressage Festival, as well as Permitted Uses and equestrian related structures in accordance with the Equestrian Village Site Plan Amendment approved November 9, 2011 by the Development Review Committee.

All the property owners joined together to request a special use permit for a dressage facility for the 2011-12 equestrian season. In addition, the property owners joined together to request approval for the construction of barns, equestrian rings and a covered equestrian arena. Those structures were permitted but the certificates of completion/occupancy were subject to the platting of the property and the submittal and approval of a landscaping plan for the western portion of the property. While certificates were inadvertently granted for some of the structures, they have been revoked subject to those same original conditions. The platting of the property is necessary for the structures to be granted final certificates of occupancy/completion.

Current Request:

The staff suspended the Commercial Equestrian Arena approval and initiated this request for a "Status Review" and Council action consistent with the provisions of Sec. 5.9.3.D of the Land Development Requirements. This Code provision provides a required review and decision making process for applications that are in violation of conditions of approval that impose time-certain requirements for implementation. Resolution R2012-08 which approved Petition No. 2011-033 CU1 contains 37 conditions of approval, eight of which contain time limits for implementation. Currently, Condition #35, which requires that the 59.3 acre property shall be platted prior to March 31, 2012, is in default. Condition #3, which required submittal of an application for a Variance on setbacks for the cell tower is no longer necessary, because the applicant has acquired the tower and setbacks are no longer an issue. The six other Conditions with time certain deadlines that have not yet defaulted require that significant bridle path improvements with appropriate driveway crossings, signalized horse crossings with advance pavement markings and signage be installed at the Pierson Road/South Shore Blvd and the Pierson Road/Southfields Road intersections, and vehicular turn lanes at South Shore Boulevard and Pierson Road be started by August 1, 2012 and completed prior to November 1, 2012. The intent of all of these approval conditions is that the equestrian and traffic improvements they require will be completed in time for next year's equestrian season. More importantly, the Master Plan Amendment approval that was a companion petition with the subject application was revoked by Council on May 22, 2012. Given the fact that the subject application was dependent upon that Master Plan Amendment, the Commercial Equestrian Arena approval is void and the Resolution that approved it (R2012-08) must be rescinded.

Options:

Council must hold a public hearing and take one of the following alternative actions:

Revoke the entire project approval because the proposed use and provisions for access are no longer consistent with the current approved Master Plan for the Wellington PUD.

Staff Analysis

Sections 5.9.3.D.2 and 5.9.3.E.2 of the Land Development Requirements provide the criteria for the findings that must be considered for decision(s) on Status Review cases. Those criteria are:

- *The original development order remains consistent with the Village Comprehensive Plan:* There have been no changes to the Comprehensive Plan that would affect the subject property since the approval resolution was adopted. Therefore, the approval granted on February 2, 2012 remains consistent.
- *The original development order remains consistent with the Land Development Regulations:* The PUD Master Plan Amendment that was originally approved on February 2, 2012 and upon which the subject Compatibility Determination relied was revoked on May 22, 2012 for failure to comply with conditions of approval. Therefore, the subject project no longer complies with the LDR.
- *The original development order remains in compliance with the Countywide Traffic Performance Standards:* The approval granted on February 2, 2012 remains consistent.
- *Attempts by the applicant to complete the unfulfilled condition:* The applicant has attempted to complete the platting requirement. An approved DRC Subdivision Plan was submitted and approved, Preliminary Plat approval was obtained and the matter was placed on agendas of the Village Council for Final Plat approval. However, the applicant was not been able to obtain final approval because of his inability to obtain the signature of one of the involved property owners on the Plat's mylar. On February 28, 2012 the approval of the Final Plat was on the Village Council agenda and staff offered the option of Council approving same with a condition that it not be recorded until the final signature is obtained, but that option was declined by Council. The applicant on May 3, 2012, submitted a revised plat document that reflects the transfer of the telecommunications tower site from Palm Beach Polo, Inc. to Polo Field One, LLC, and reflects the site as an easement rather than a separate lot. If the plat is approved as now submitted, the condition of the Commercial Equestrian Arena compatibility determination requiring a variance for the location of the covered equestrian arena would be eliminated. The transfer also eliminates the need to secure Palm Beach Polo, Inc.'s signature on the plat as an owner and through a contemporaneous transaction, Palm Beach Polo, Inc.'s mortgage interest in the property was satisfied, eliminating the need for their signature on the plat as a mortgagee. The transactions which simplify ownership of the property took place on or about April 30, 2012. The Plat was on the Council agenda of May 22, 2012 for final approval. However, prior to reaching that agenda item Council took action to revoke the PUD

Master Plan Amendment approved under R2012-07, thereby rendering the proposed Plat inconsistent with the PUD Master Plan. Therefore the Plat could not be approved. Since the Plat cannot be approved as submitted, it is not possible for the subject application to come into compliance with Condition #35.

- *Reliance by other parties on the timely performance of activity:* The Plat requirement does not impact any other parties.
- *Any changed circumstances which may have interfered with the ability of the property owner to meet the time certain requirement:* Ownership issues addressed above.
- *Actions by other parties that may have precluded compliance:* The party causing the inability to comply was one of the applicants, so the reason for the delay is internally created.
- *The existence of extraordinary mitigating factors:* With the revocation of the PUD Master Plan Amendment (May 22, 2012) upon which the subject application was dependent, the subject project approval has been voided. Therefore, Resolution R2012-08 should be rescinded. None known
- *Compliance with the review criteria in subsection 11.4.3.E criteria 1-5, above, for posting of performance surety for a conditional certificate of concurrency reservation:* Not applicable.

Notification:

The property owner was notified of this review and given a copy of the staff recommendation in a certified mail package. Further, a Notice of Intent to Suspend Development Orders was recorded. A Notice of Hearing was published in the Palm Beach Post on May 10, 2012, for the May 22nd hearing. The applicant was in attendance at the May 22, 2012 Village Council meeting and was present when this matter was continued to the June 12, 2012 meeting. The applicant was also in attendance at the June 12th meeting when this matter was postponed to the July 10, 2012 meeting. However, staff has readvertised the pending hearing and has renoticed the property owner by Certified Mail. A copy of this staff report was provided to the property owner, as well.

Staff recommendation

Based on the review criteria provided in Sections 5.9.3.D.2 and 5.9.3.E.2 of the Wellington Land Development Regulations Staff recommends that the approval of the Commercial Equestrian Arena Compatibility Determination granted under Resolution R2012-08 be rescinded. In addition to the project having failed to meet time certain conditions of approval, it is no longer consistent with the current Wellington PUD Master Plan.

- 1 **33.** Regardless of the number of rings, arenas or venues operating, the maximum
2 number of spectators permitted at the commercial equestrian arena at any time
3 is 3,500 persons.

4 **SIGNS**

5

- 6 **34.** The owner shall submit a Master Sign Plan for review and approval by staff
7 and Wellington's Architectural Review Board (ARB).

8

9 **PLATTING**

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- 11 **35.** The owner shall record the plat of the 59.3 acre property for the Commercial
12 Equestrian Arena prior to March 31, 2012.

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14 **INFRASTRUCTURE**

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- 16 **36.** Any improvements within easements to be dedicated to Wellington or within
17 public canals and/or road right of ways shall require 110% surety prior to
18 commencement of construction. (ENGINEER)

19 **SITE DESIGN**

- 20 **37.** The Commercial Equestrian Arena and all permanent structures shall be
21 subject to Section 6.5.19.I Design Standards and Section 6.10.11 Commercial
22 Development Standards in the Equestrian Overlay Zoning District.

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