

I. PROJECT DESCRIPTION:

Project Name: Administrative Appeal

Petition No: 2014-003AA HTE 14-015; Administrative Appeal from determination(s) made by Planning, Zoning & Building Department Staff related to building and development permits issued on property located at the northeast corner of the intersection of South Shore Boulevard and Pierson Road. Specifically:

- Article 6, Section 6.10.11(d) (**EOZD Commercial Development Standards**), which provides:

D. Size

“The gross floor area of any single commercial use shall not exceed twenty thousand (20,000) square feet, including indoor storage, administrative offices, and similar areas.”

- ✓ The appellant contends the stables constructed on the site exceed the limit entirety in their cumulative square footage and therefore exceed this Code allowance.
- ✓ The appellant contends the combination of the viewing deck, seating area and vendor area also exceed this Code allowance.
- ✓ The appellant contends that the covered arena (80,000 square feet) is in excess of the maximum permitted commercial use limitation.

- Article 6, Section 6.5.8.C.2 (**Zoning Districts, Height Limitations**), which provides:

C. Height Limitation.

2. “No building or structure or part thereof shall be erected or altered to a height exceeding twenty five (25) feet in districts with a Comprehensive Land Use Plan Category of Conservation, Neighborhood Commercial, and Commercial Recreation.”

- ✓ The appellant observes the covered equestrian arena structure is more than 25 feet high and is therefore in violation of the Code limitation. The appellant further states the structure is more than 35 feet high.

Original Application: The appeal(s) under consideration do not relate specifically to the overall project that was granted to the Equestrian Village project,

originally approved under applications #2011-033 MPA1 & #2011-033 CU1 and later reapproved under applications #2013-040 MPA2 and #2013-040-CD. However, they do relate to interpretations and determinations that were made and/or applied as a part of the permitting for improvements on the property.

Project Name: Equestrian Village.

Original Applicant: Equestrian Sport Productions, LLC, Stadium North, LLC, Stadium South, LLC, Polo Field One, LLC and Far Niente Stables II, LLC.

Owner: Same

Appellant: Shubin & Bass, P.A. on behalf of Charles & Kimberly Jacobs and Solar Sports Systems, Inc.

Location: Northeast corner of the intersection of South Shore Boulevard and Pierson Road.

PCN: 73-41-44-16-00-000-5030, 5040, 5050, 5060 and 5070

Acres: 59.3 +/- acres.

Original Approval: The applications listed above are for a PUD Master Plan Amendment and Compatibility Determination to allow a Commercial Equestrian Arena project. Both of the original applications were approved by Village Council on February 1, 2012, but were revoked later that year for failure of the applicant to comply with time certain conditions of approval. The project was reapproved on October 24, 2013. However, as noted above, these appeals do not specifically relate to or challenge the project approvals. Rather, the appeals relate to interpretations and determinations made by staff related to the issuance of development permits for individual structures within the project site.

II. RECENT SITE HISTORY:

The Wellington PUD Master Plan Amendment and Commercial Equestrian Arena approval noted above were originally granted by Village Council on February 1, 2012. Prior to that date the Dressage activities on the site for the 2011/2012 season were approved with a Special Use Permit dated April 28, 2011. Several equestrian related structures permitted as of right such as commercial stables and a private covered training arena. These were built in accordance with the Equestrian Village Site Plan Amendment were approved November 9, 2011 by the Development Review Committee. The structures that were approved and built are permitted on properties in the EOZD designated Commercial Recreation on the Future Land Use Map of the Comprehensive Plan, and do not require a Commercial Equestrian Arena designation approval.

The PUD Master Plan Amendment and Commercial Equestrian Arena Compatibility Determination approvals granted on February 1, 2012 were rescinded by the Village Council on May 22, 2012, for failure to comply with time certain conditions of approval.

Following a period of litigation and approval of a settlement agreement, Village Council re-approved the project on October 24, 2013.

III. APPEAL BACKGROUND:

During the course of the approval process for Equestrian Village, the appellant submitted letters and provided testimony at various public hearings arguing the same Code provisions that are the subject of these current appeals which they contend have been and are being misinterpreted. Although the appellant repeatedly makes comment these subject appeals have been pending for several years, it should be noted that proper appeals were not submitted until the end of January of this year. Article 1, Chapter 12 of the Land Development Regulations require that prior to the filing of an appeal a potential appellant must first request a formal interpretation of a questioned Code provision (on forms provided by the Village). Following receipt of a response to such request, the requestor must file an appeal within 20 working days. Staff received a request for interpretation of the Code provisions referenced above on December 17, 2013 (Exhibit A). This request was responded to on December 24, 2013 in a communication signed by Robert E. Basehart (Exhibit B). The appellant submitted their appeal (Exhibit C) on January 28, 2014, which is the subject of this agenda item.

It should be noted that a subsequent argument is being made by others, challenging the standing of this appellant to file the subject appeal, because they are not the land owner of the property that precipitated the issue at hand. The objection to allowing the appeal is based on the initiation provision in Article 1, Section 1.12.1(B) which states:

B. Initiation: An interpretation may be requested by any property owner or person having a contractual interest in land in the Village of Wellington, or any person that has submitted an application for development permit pursuant to the provisions of this Code.

Staff has allowed the filing of both the request for interpretation and the appeal, based on our belief that any property owner within the Village should have access to the appeal process. We are not aware of anyone who has been denied access to the interpretation and appeal process. An appeal to Circuit Court has been filed by the property owner (FAR NIENTE), asking that the appellant be judged to have no standing. This Court appeal has resulted in agreement between the staff and the appellant to postpone the matters at hand for several months. We have scheduled the matter for the PZAB August meeting in hopes that the Court Appeal will be settled by that time, but intending to have the hearing even if the Court decision is not rendered.

IV. STAFF ANALYSIS:

As a part of your review and decision making process it is important for all Planning, Zoning and Adjustment Board members to remember and apply several important considerations. The first and most important consideration is the "Standard of Review." Article 1, Section 1.12.E.3 of the Land Development Regulations provides:

3. Standard of review. At the appeal hearing the Board shall consider the interpretation of the Village official responsible for rendering the interpretation and public testimony in light of the Comprehensive Plan and this Code, whichever is applicable. The Board shall not modify or reject the Village official's

interpretation, if it is supported by substantial competent evidence, unless the interpretation is found to be contrary to the Comprehensive Plan and this Code, whichever is applicable.

The effect of the above is the staff interpretation of the Code is assumed to be correct and should not be modified or rejected as a part of consideration for an appeal if there is supportable reasoning for the interpretation.

Second, it is also important to be aware that the decision of the PZAB with respect to an interpretation of a Code provision becomes the official interpretation of the Village, unless overturned by the Courts or modified by adoption of a future Code amendment. That interpretation must also be applied uniformly to all properties that are governed by the Code. Therefore, the potential impact on both currently developed and undeveloped sites should be considered. The provisions of the Code that are being appealed have been in the Code for many years and have been uniformly applied up to this date. A change in the interpretation of these provisions will adversely impact the conformance status of numerous buildings throughout not only the EOZD, but even in the non-equestrian areas.

The interpretations rendered by Village Staff by the December 24, 2013 letter from Robert E. Basehart provide substantial competent evidence to justify same and demonstration of compliance with the intent of the Code and the Comprehensive Plan. The primary focus of the appeals are improperly based on an attempt to misapply the concept of "floor area" (the interpretation of which has not been appealed) and an attempt to apply the limitations in floor area through a cumulative calculation for commercial uses rather than basing it on "individual uses", as clearly provided in the Code language.

The appeal for the building height issue is a contention that a Code provision that does not apply to properties within the EOZD should have been used to regulate the height of the covered arena structure. Section 6.5.8.C.2 does provide that generally buildings designated Commercial Recreation by the Comprehensive Plan are limited to a building height of 25 feet. However, that height restriction is superseded by Section 6.10.6.B (Table B) which provides for a maximum height limit of 35 feet for properties within the EOZD. The property in question is within the EOZD. Section 6.10.2 provides that where a conflict exists between Section 6.10 (EOZD) and other provisions of the Land Development Regulations, the provisions of this Section (Section 6.10) shall govern. Therefore, the maximum 35 foot height limit applies for the property in question.

V. STAFF RECOMMENDATION:

Staff recommends that the interpretation of the provisions of *Article 6, Section 6.10.11(d)* and *Article 6, Section 6.5.8.C.2* be found to be correct based upon substantial competent evidence, and the appeals be rejected.