ROSENBAUM MOLLENGARDEN PLLC
ATTORNEYS AT LAW

July 31, 2014

VIA HAND-DELIVERY ONLY

07-31-14 P04:01 IN

Awilda Rodriguez, Clerk
Village of Wellington
12300 Forest Hill Blvd.
Wellington, FL 33414

Re: ESP – Development – PZAB Quasi-Judicial Hearing on the Jacobs' Administrative Interpretation Appeals to be held before the PZAB on August 6, 2014 at 7:00 p.m.

Dear Ms. Rodriguez:

Enclosed, for filing with the Village, please find the submission of our clients for the above-referenced PZAB hearing. Please provide a copy of the enclosure to each member of the Planning, Zoning and Adjustment Board and please include it in the record for the appeal hearing of August 6, 2014. Thank you for your attention to this matter.

Very truly yours,

Daniel S. Rosenbaum
For the Firm

DSR/en
Enclosure

cc: Mark J. Bellissimo, Managing Member (w/ encl.)
Mike Sexton (w/ encl.)
Michael Stone (w/ encl.)
Tatiana B. Yaques, Esquire (w/ encl.)
Elizabeth L. Hertz, Esquire (w/ encl.)

23U2239

250 South Australian Avenue, 5th Floor • West Palm Beach, FL 33401
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ROSENBAUM MOLLENGARDEN PLLC
ATTORNEYS AT LAW

07-31-14 P04:01 IN

July 31, 2014

VIA HAND DELIVERY

Planning, Zoning and Adjustment Board
c/o Village of Wellington
12300 Forest Hill Blvd.
Wellington, FL 33401

Re: August 6, 2014, Appeal of Administrative Determinations made by Planning & Development Services Department Staff Relating to Building and Development Permits Issued on the Equestrian Village Property

Dear Members of the Planning, Zoning and Adjustment Board:

This correspondence is being sent on behalf of my clients, Equestrian Sports Productions, LLC, Far Niente Stables II, LLC, Polo Field One, LLC, Stadium North, LLC and Stadium South, LLC, and their affiliated entities (collectively "ESP"). ESP objects to the Appeal of Administrative Interpretations hearing scheduled to proceed before you on August 6, 2014, on the grounds that section 1.12.1 of Wellington's Land Development Regulations (the "Code"), which this hearing is proceeding under, is unconstitutional, and on the grounds that this procedure is being used improperly to attempt to eliminate vested rights that ESP has properly obtained through Village of Wellington processes. ESP is in the process of seeking a temporary injunction from the Circuit Court of Palm Beach County to prevent any processes from going forward under section 1.12.1 of the Code, including the August 6, 2014 hearing before you. A hearing on ESP's Motion for Temporary Injunction is schedule to be heard before Circuit Court Judge Timothy McCarthy on August 1, 2014 (Case No. 502014CA003331XXXXMB) (the "Circuit Court Case"). Nonetheless, in an abundance of caution and without any prejudice of any kind to ESP's rights in any respect to challenge the subject Code provisions and the PZAB proceedings, this correspondence serves as notice that my clients intend to participate as interested parties at the August 6, 2014 hearing or any such other hearing on this matter, should it proceed. We respectfully request 40 minutes of presentation time. Further, we would like to address ESP's opposition to the August 6th hearing, as set forth below.

Background

On December 6, 2013, Charles Jacobs, Kimberly Jacobs, and Solar Sportsystems, Inc. (collectively the "Jacobs") submitted four Planning and Zoning Interpretation Requests to the Village pursuant to section 1.12.1.B of the Code. The Interpretation Requests challenge the Village's determination of how Code provisions apply to the size and height of the covered arena, size of the seating area and size of the stables on the Equestrian Village property. *See* Interpretation Requests attached as ***Composite Exhibit "A"***. In particular, the Jacobs argue as follows:

1. That the covered arena is a structure with 80,400 square feet of floor area; and it exceeds the 20,000 square foot gross floor area commercial development intensity limitation set forth in Code section 6.10.11(D);
2. That the equestrian arena seating is a structure with floor area; and it exceeds the 20,000 square foot gross floor area commercial development intensity limitation set forth in Code section 6.10.11(D);
3. That the stables in their entirety are structures with floor area; and they exceed the 20,000 square foot gross floor area commercial development intensity limitation set forth in Code section 6.10.11(D); and
4. That the maximum building height for commercial recreation properties is 25 feet under Code sections 6.5.1 and 6.5.8; and the covered arena exceeds this height limitation.

The Village issued its written Administrative Interpretation on December 24, 2013 (the "Interpretation"), which the Jacobs have appealed. *See* Interpretation attached hereto as ***Exhibit "B"*** and the Jacobs' Appeal attached hereto as ***Exhibit "C"***.

Although the Jacobs have *no ownership or contractual interest* in the Equestrian Village property, and although the requested interpretations involve determinations that the Village had already made and that ESP had relied upon, the Village allowed the Jacobs to obtain these binding interpretations as to the Equestrian Village property under section 1.12.1.B of the Code. ESP was not given any notification that the Administrative Interpretations were being requested or issued as to its property, and section 1.12.1 in fact does not have any provision requiring notice to the land owner who is affected by the interpretation. This means that under section 1.12.1., Wellington permits <u>any</u> landowner or <u>any</u> person with a contractual interest in <u>any</u> land in the Village of Wellington to utilize the Village's processes to obtain binding decisions regarding the property of <u>other</u> landowners without the participation of the property owner in the process. We believe this is an unconstitutional deprivation of due process under the Florida and United States Constitutions, which renders section 1.12.1 of the Code void and unenforceable. We also believe that ESP has vested rights in the Village Staff's determination of how the Code provisions relating to size and height apply to the structures on the Equestrian Village property, and that the Administrative Interpretation process cannot be used to take away those vested rights. We have raised these arguments in detail in the Circuit Court Case through an Amended Complaint for Declaratory and Injunctive Relief, Motion for Temporary Injunction, and Memorandum of Law in Support of Plaintiff's Motion for Temporary Injunction, a copy of which are attached hereto as ***Composite Exhibit "D"*** and incorporated herein by reference.

There are also numerous others reasons why we believe this is an improper process before you, which will be addressed below. Further, we believe that the Village's interpretation of its Code provisions pertaining to the size and height of the structures on the Equestrian Village property was correct, and therefore we request that the Jacobs' appeals be denied.

<u>The Jacobs' Requested Interpretations are Actually Challenges to Village Decisions and are not Proper Interpretation Requests</u>

The appeals being presented are improper because the Interpretation Requests submitted by the Jacobs do not actually request an interpretation of how Code provisions apply to property. Instead they are **challenges and attacks** as to how the Village applied specific Code provisions pertaining to the height and size of structures built on the Equestrian Village property, and they express contrary positions to those taken by the Village. However, section 1.12.1 of the Code is not the proper avenue for the Jacobs to challenge the Village's previous issuance of a development order. Section 1.12.1 is merely a method by which a party may seek an *interpretation* as to how a provision of the Code applies to one's own property or property in which he has a contractual interest to purchase. The law provides other methods and time frames to raise challenges to development approvals, but section 1.12.1 is not such a method. The Village is erroneously allowing the Jacobs' to circumvent the appellate remedies provided for under the Code and Florida law by allowing them to challenge the propriety of the existing structures on the Equestrian Village property under section 1.12.1 of the Code.

The Jacobs are Collaterally Estopped from Raising the Issues contained within their Interpretation Requests

Even if section 1.12.1 was a proper method to challenge Village decisions (which it is not), the Jacobs would be estopped from raising the issues contained within their Interpretation Requests. The Jacobs formally participated in the permitting and review process which resulted in the Village's approval of the Equestrian Village project and its existing facilities since the development order process was commenced in 2011. In fact, the Jacobs or their representatives attended all development order hearings and related proceedings as interested parties. The most recent approvals of the Equestrian Village project issued by the Village, including Resolutions 2013-48 (Master Plan Amendment) and 2013-49 (Commercial Equestrian Arena Compatibility Determination), were not appealed by the Jacobs through the permissible legal avenues available to them.

Section 5.1.18(A) of the Code states the following:

> **Appeals from Council Decisions for Development Permits.** Any person aggrieved by a decision of the Village Council on an application for development permit for other than an amendment to the Future Land Use Map, or comprehensive plan may apply for judicial relief by the filing of a Petition for Writ of Certiorari in the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida, within thirty (30) calendar days of the date the zoning resolution or ordinance is filed with the Clerk of the Circuit Court, in accordance with the procedure and within the time provided by the Florida Rules of Civil Procedure and the Florida Rules of Appellate Procedure.

If an aggrieved party does not file a petition for writ of certiorari within 30 days of the filing of the Council's resolution with the Clerk of Court, they are barred from doing so at a later date. Fla. R. App. P. 9.100(c)(2); *Florida Mobile Home Relocation Corp. v. City of South Daytona*, 80 So. 3d 1061,1062 (Fla. 1st DCA 2012). The time to appeal Resolutions 2013-48 and 2013-49 has long since lapsed, and therefore these Resolutions are final.

The issues raised by the Jacobs' requests for Administrative Interpretations involving the size of the stables, viewing deck/seating area, and covered arena and the height of the covered arena were already addressed by R2013-49 because a conceptual site plan which indicated the size of the covered arena, stables and viewing deck/seating area and the maximum 35' height for buildings, was approved as part of R2013-49. *See* Resolution 2013-49 with Conceptual Site Plan attached hereto as ***Exhibit "B".*** The development orders are final, and therefore "the doctrine of collateral estoppel- which is also known as issue preclusion and estoppel by judgment - bars litigation of the same issues between the same parties in connection *with a different cause of action*". *M.C.G. v. Hillsborough County School Bd.*, 927 So. 2d 224, 226-227(Fla. 2d DCA 2006); *see also Cook v. State*, 931 So. 2d 631, 634 (Fla. 2d DCA 2005) (Collateral estoppel also applies to administrative proceedings). Accordingly, the Jacobs' challenges are legally barred.

Highly Deferential Standard of Review

Even if the PZAB considers the substance of the appeals raised by the Jacobs, it is important for the Board to be aware that Code section 1.12.1(E)(3) sets forth a highly deferential standard of review that must be applied in this process. In particular, section 1.12.1(E)(3) states as follows:

> 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.**

Code § 1.12.1(E)(3) (emphasis added).

This standard of review means that the Board must give deference to the Village's interpretation, if it is supported by substantial competent evidence and is not contrary to the Comprehensive Plan and the Code. The Village's interpretation as to the size and height of the structures at issue on the Equestrian Village property is in accordance with the Code and Comprehensive Plan provisions, and that the Jacobs' arguments to the contrary are meritless.

The Equestrian Village Property is not Limited to a Total of 20,000 square feet of Construction

In their January 28, 2014 letter appealing the Village's Administrative Interpretation, the Jacobs argue that the ***entire*** Commercial Equestrian Arena, with all of its structures included, is a single use, and as such is subject to the 20,000 square foot limitation. *See* ***Exhibit "C"***. In other words, the Jacobs claim that the total maximum allowable construction on the entire 59.3 acre Equestrian Village property is 20,000 square feet. However, this argument is not a proper subject for appeal because the Jacobs never requested an Administrative Interpretation on this issue. Further, this argument is contrary to the Jacobs' December 6, 2013 requests for Administrative Interpretation, where they claimed that section 6.10.11(D) of the Code limits the

size of commercial uses within the EOZD to 20,000 square feet, and that the covered equestrian arena, stables and seating areas on the Equestrian Village property are ***each structures or uses*** that are subject to and exceed this limitation. *See* ***Exhibit "A"***. The Jacobs specifically stated that the "operative district regulations for the EOZD prohibit the development ***of any commercial structure*** in excess of 20,000 square feet of gross floor area" under section 6.10.11(D) of the Code. *See id.* Therefore, even if the PZAB were to consider the argument, it squarely contradicts the position taken by the Jacobs in their requests for Administrative Interpretation.

In addition, the argument that the total allowable construction on the Equestrian Village property is limited to 20,000 square feet is contrary to the Village's Comprehensive Plan. In particular, Policy 1.3.15 of the Land Use Element of the Comprehensive Plan states as follows:

> Policy 1.3.15 Commercial Recreation -- Properties designated Commercial Recreation support commercial uses which are recreational in nature and are compatible with residential and rural development patterns. **Uses such as equestrian arenas, stadiums and show rings**, golf courses, clubhouses, tennis houses, pools and other private recreational facilities **are consistent with this designation**. There are also a variety of quasi-commercial uses such as veterinary clinics, feed stores, tack shops and commercial stables scattered throughout the Equestrian Preservation Area of Wellington that are ancillary to the equestrian community and will be permitted in the Commercial Recreation Land Use Plan Sub-category. Commercial Recreation properties shall retain a Category B underlying Land Use Plan designation. **Maximum building coverage 10%. Maximum FAR 0.10**.

(Emphasis added).

The Equestrian Village property has a land use designation of Commercial Recreation. The Comprehensive Plan clearly states that uses such as "equestrian arenas, stadiums and show rings" as well as "commercial stables" are permitted on Commercial Recreation property, and specifically states that the maximum building coverage for each such property is 10% and the maximum FAR (Floor Area Ratio) is 0.10. Therefore, the Comprehensive Plan contemplates the use of commercial recreation properties for equestrian arenas, stadiums, show rings and stables, as exist on the Equestrian Village property, and specifically states what the maximum permissible building coverage and floor area ratios are for construction. It is inconsistent with the Comprehensive Plan to read Code section 6.10.11(D) to limit the entire allowable construction on a 59.3 acre commercial recreation property to only 20,000 square feet, because the Comprehensive Plan permits greater amount of uses.

The Covered Arena, Seating Area and Stables are not Subject to the Size Limitation in Section 6.10.11(D)

The Jacobs also claim that the covered arena, viewing deck/seating areas and stables are subject to the size limitation in section 6.10.11(D) of the Code, and that these structures each exceed the 20,000 square foot limitation. However, this argument is contrary to the plain

language of the Code. As set forth in the Village's December 24, 2013 Administrative Interpretation, and incorporated herein by reference, the intent of section 6.10.11(D) is to regulate retail development allowed with the EOZD, and there is "a clear indication that structures that serve agricultural or equestrian activities and uses such as barns, stables, arenas, spectator areas and uses are not intended to be considered commercial for the application of the development standards of this section." *See* ***Exhibit "B"***. Accordingly, the Jacobs' appeals regarding the size of the covered arena, seating area and stables fail for this reason alone.

The Village did not Issue an Administrative Interpretation as to the Floor Area of the Covered Arena, Seating Area and Stables

Although the Jacobs claim to challenge the determination of the floor area of the covered arena, seating area and stables, the Village did not issue an Administrative Interpretation as to the floor area for these structures. As such, there is no proper appeal of the floor area of the covered arena, seating area and stables, and these issues may not be considered by the PZAB.

Under the Plain Language of the Code, the Covered Arena Does Not Have Any Floor Area

As set forth above, the Jacobs claim that the covered arena exceeds the size limitations in section 6.10.11(D). Even if the PZAB were to consider this issue, which it should not, the size limitations in section 6.10.11(D) are measured as square footage of "gross floor area", which is a defined term under the Code.[1] Therefore, the definition of what constitutes "gross floor area" under the Code must be applied. In particular, Article 3, Chapter 2 of the Code defines "floor area" as follows:

> **Floor area** means the gross horizontal square footage of all floors of a building measured from the exterior face of exterior walls or other type of enclosure, or from the centerline of a wall separating two (2) buildings.

The floor area calculation clearly requires an exterior wall or other type of enclosure. The covered arena does not have any exterior walls or enclosures. It is a large shade structure located over an earthen riding surface, and is meant to protect riders and horses from the elements. Therefore, the covered arena does not have any floor area and cannot possibly exceed the size limitations in section 6.10.11(D).

The Seating Area Does Not Exceed the Size Limitations Under Section 6.10.11(D)

The Jacobs also claim that the seating area exceeds the size limitations in section 6.10.11(D). Even if the PZAB were to consider this issue, which it should not, the seating area does not have floor area because floor area is the "gross horizontal square footage of all floors of a *building*". Article 3, Chapter 2 defines "building" as follows:

---

[1] Section 6.10.11 (D) states: "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."

> **Building** means any structure having a roof supported by columns or walls and intended for the shelter, housing or enclosure of any individual, animal, process, equipment, goods or materials of any kind or nature.

The seating area does not have a roof and therefore is not a building. Accordingly, it does not have floor area and cannot possibly exceed the size limitations under section 6.10.11(D).

The Stables Do Not Exceed the Size Limitations Under Section 6.10.11(D)

The Jacobs further claim that the stables exceed the size limitations in section 6.10.11(D). Even if the PZAB were to consider this issue, which it should not, the stables each have less than 20,000 square feet of floor area, as determined by the interpretation rendered by Mr. Basehart. *See* ***Exhibit "B"***. Accordingly, the stables do not exceed the size limitations under section 6.10.11(D).

The Plain Language of the Code Establishes a 35 Foot Height Limit in the EOZD

The Jacobs claim that the 25' building height limit in section 6.5.8(C)(2) of the Code controls over the 35' building height limit set forth in section 6.10.6.B (Table B) of the Code. However, this argument is contrary to the plain language of the Code. Section 6.5.8 is located in Article 6, Chapter 5 of the Code which is titled "Property Development Regulations". There is no provision in Chapter 5 which states that it supersedes other Code provisions in the event of a conflict. On the other hand, the 35' height limit set forth in Chapter 10 is located within the Equestrian Overlay Zoning District regulations. The EOZD regulations have very specific provisions dictating the effect of these provisions. In particular, section 6.10.2 states as follows:

> Sec. 6.10.2. Applicability and Conflicts.
> **The provisions of this Article shall apply to all land located within the Equestrian Preservation Areas**, as identified on the Future Land Use Map of the Village of Wellington Comprehensive Plan.
> **In the event of any conflicts between the requirements of this Article and the requirements of the Land Development Regulations, the requirements of this Article shall govern**. In the absence of any conflict, the requirements of the underlying zoning district and the Land Development Regulations shall be applicable and supplemental to the requirements of this Article.

(Emphasis added).

The 25' building height limit in section 6.5.8 for commercial recreation properties is in direct conflict with the 35' building height limit in section 6.10.6.B (Table B). However, section 6.10.2 provides that the provisions of Chapter 6, Article 10 apply to all land located within the Equestrian Preserve Areas and that, in the event of a conflict, the EOZD regulations control. As such, the clear language of the Code unequivocally indicates that the 35' building height limit applies to the Equestrian Village property and controls over any conflicting provision in another Article of the Code.

Conclusion

In view of the foregoing, the appeals should be dismissed on constitutional grounds, denied due to collateral estoppel, and alternatively, the Village's administrative interpretations should be affirmed.

Respectfully submitted,

Daniel S. Rosenbaum
For the Firm

DSR/es
Enclosure

cc: Tatiana B. Yaques, Esquire (w/o encl.)
Elizabeth L. Hertz, Esquire (w/o encl.)
Mark J. Bellissimo (w/o encl.)
Mike Sexton (w/o encl.)
Michael Stone (w/o encl.)

23S4125

Via Electronic Mail

December 6, 2013

Laurie Stillwell Cohen, Esq.
Village Attorney
Village of Wellington
12300 Forest Hill Boulevard
Wellington, FL 33414

Re: Administrative Appeals

Dear Laurie:

This correspondence is transmitted to you in response to you November 7th letter regarding the four (4) administrative appeals that have been pending before the Village of Wellington for almost two years. These appeals were properly and timely filed with the Village Clerk and Village Attorney and were accepted by the Village. At no time during this time has the Village advised that the appeals were not timely or appropriately filed, or that a form needed to be filed to perfect their status, even though we specifically asked at the time of filing if any forms or fees were needed. A copy of the appeals are attached to this correspondence.

The interpretations that were appealed were already provided and the Village has stood by those interpretations for the last two years during the permitting and approval process of Equestrian Village. At the October 22, 2013 hearing, I raised the fact that the Village (the Developer) was again relying on the exact interpretations that had been appealed and that no final decision had been provided as to the propriety of the Village's position because the Village had failed to set them for hearing.

Your correspondence contemplates a process when an interpretation has not been provided. This is not the case under the current circumstances. The Village has repeatedly provided its interpretation in numerous public forums, and accordingly, that is the interpretation that has been appealed, and that is the process



that we were advised by the prior Village Attorney and Staff to follow. The process you are requesting us to follow is only available when an interpretation has not been given.

Nonetheless, you have specifically advised that you are in no way challenging our right to the appeals that we have filed or trying to prohibit our appellate rights from moving forward. You have further advised that the Village will not change the previous determinations that it has rendered on numerous occasions. Accordingly, while preserving our arguments, and without waiving our right to challenge the requirement to file under these circumstances (through the filing of an action for declaratory relief), I am filing the attached forms under protests and request that this matter be immediately addressed so that we can move forward in this process.

I am also forwarding a check in the amount of $2000.00 to process these appeals.

Thank you for your anticipated attention to this matter.

Sincerely,

Amy E. Huber
For the firm

Enc.

cc: Claudio Riedi, Esq.
Mr. Paul Schofield
Mr. Tim Stillings

WELLINGTON

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Planning, Zoning Division
12300 Forest Hill Blvd , Wellington, FL 33414 (561) 791-4000 pzapplications@wellingtonfl.gov

PLANNING & ZONING INTERPRETATION REQUEST

I. PETITIONER OR AGENT INFORMATION

Petitioner(s) if other than owner(s): Charles and Kimberly Jacobs & Solar Sportsystems

Address: see attached City: _____ ST _____ Zip _____

Phone: _____ FAX: _____

Agent:* Shubin & Bass, P.A. John Shubin, Jeff Bass, Amy Hub

Company Name: _____

Address: 46 SW 1st St. 3rd Fl City: Miami ST FL Zip: 33130

Phone: 305.381.6060 FAX: 305.381.9457

*All correspondence will be sent to agent unless otherwise requested.

II. INTERPRETATION REQUEST

A. INTERPRETATION REQUEST (State the Code and Section thereof for which the interpretation is requested Be specific with respect to the nature of your interpretation request):

Please see attached.

B. Project Name (if applicable)

Equestrian Village

C. Project Address (if applicable)

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Planning, Zoning Division
12300 Forest Hill Blvd., Wellington, FL 33414 (561) 791-4000 pzapplications@wellingtonfl.gov

PLANNING & ZONING INTERPRETATION REQUEST

I. PETITIONER OR AGENT INFORMATION

Petitioner(s) if other than owner(s): Charlie & Kim Jacobs / Solar Sportsystems, Inc.
Address: 2730 Polo Island Dr, A-104 / 13307 Polo Club Rd, C-104 & C-105 City: Wellington ST FL Zip: _____

Phone. _____ FAX: _____

Agent: * John Shubin, Jeff Bass, and Amy Huber
Company Name: Shubin & Bass, P.A.
Address: 46 SW 1st St, 3rd Floor City: Miami ST FL Zip 33130
Phone. 305.381.6000 FAX: 305.381.9457

*All correspondence will be sent to agent unless otherwise requested.

II. INTERPRETATION REQUEST

A. INTERPRETATION REQUEST (State the Code and Section thereof for which the interpretation is requested. Be specific with respect to the nature of your interpretation request).

Article 10, Sec. 6.10.11(d)

The covered commercial equestrian arena is 80,400 sq. ft. This is in excess (4x) of the maximum permitted commercial use permitted in the EDTD pursuant to Article 10, Sec. 6.10.11(d).

See attached appeal dated January 30, 2012.

B. Project Name (If applicable):

Equestrian Village

C. Project Address (if applicable)

LAW OFFICES
SHUBIN & BASS
PROFESSIONAL ASSOCIATION

Via Electronic Mail
and U.S. Mail

January 31, 2012

Ms. Awilda Rodriguez
City Clerk
City of Wellington
12300 Forest Hill Boulevard
Wellington, Florida 33414

Re: Appeal of Administrative Interpretation Re: Equestrian Arena

Dear Ms. Rodriguez:

This appeal is filed on behalf of Charles and Kimberly Jacobs and Solar Sportsystems, Inc. (collectively, the "Appellants"), the owners of real property located in the City of Wellington at 2730 Polo Island Drive, A-104, Wellington, Florida and 13307 Polo Club Road, C-104 and C-105, Wellington, Florida, respectively. The Appellants are aggrieved and adversely affected by an administrative interpretation, rendered by the City, related to the calculation of Floor Area for an Equestrian Arena that is approximately 80,400 square feet in size (the "Subject Interpretation"). (The Equestrian Arena is described in detail in Exhibit A (attached)). The Subject Interpretation is erroneous and must be reversed.

Please consider this correspondence as the Appellants' appeal of the Subject Interpretation and corresponding request for a public hearing regarding same. If there are forms and/or fees associated with this Administrative Appeal, kindly identify them for us at your earliest convenience, and we will remit them forthwith.

I. The Equestrian Arena is a "Structure" with 80,400 square feet of Floor Area

The City's Land Development Regulations, Florida law, and common sense require the reversal of the Subject Interpretation. The City's Code defines "Floor Area" to mean "the ratio of the gross floor area of all structures on a lot to the lot area, excluding vertical core circulation areas for multistory structures. "Art. 3, Ch. 2, City Code. (Emphasis supplied). The City's Code defines "Structure" as "that which is three

(3) feet or more in height, built or constructed or erected or tied down having a fixed location on the ground or attached to something having a permanent location on the ground, such as buildings, homes, mobile homes, towers, walls, fences. billboards, shore protection devices, and poster panels." *Id.*

Legally and grammatically, it is clear that the Equestrian Arena is a "structure" as that term is defined by the City Code and commonly understood. Because the Equestrian Arena is a *single-story* structure – no exception exists for the calculation of its floor area because the only enumerated definitional exception is limited to **multi**story structure which this is not. Under the doctrine of *expressio unius est exclusion alterius*, the Code's express mention of one exclusion directly implies that none other exists. By all measurements and all definitions then, the Equestrian Arena is – under the City's Code – a "structure" comprising 80,400 square feet of Floor Area. The City staff's contrary administrative interpretation is therefore clearly erroneous and must be reversed.

II. The Equestrian Arena is Prohibited by the EOZD District Regulations

The Equestrian Arena is located within the Equestrian Overlay Zoning District ("EOZD"). *See* Exhibit A. The operative district regulations for the EOZD prohibit the development of any commercial structure in excess of 20,000 square feet of gross floor area. *See* Article 10, Sec. 6.10.11(d), City Code. Because the Equestrian Arena exponentially exceeds the ***maximum* permitted** commercial development intensity within the EOZD, it is prohibited therein. As such, it was clear and reversible error for the City's administration to approve its development within the EOZD District.

The Appellants reserve the right to supplement this appeal with additional legal authority and arguments if and when the City responds to their Public Records Act requests.

Sincerely yours,

John K. Shubin, Esq.
Jeffrey S. Bass, Esq.
Amy E. Huber, Esq.
For the firm

cc: Jeff Kurtz, Esq., City Attorney
Mr. David Flinchum, Planning & Zoning Manager

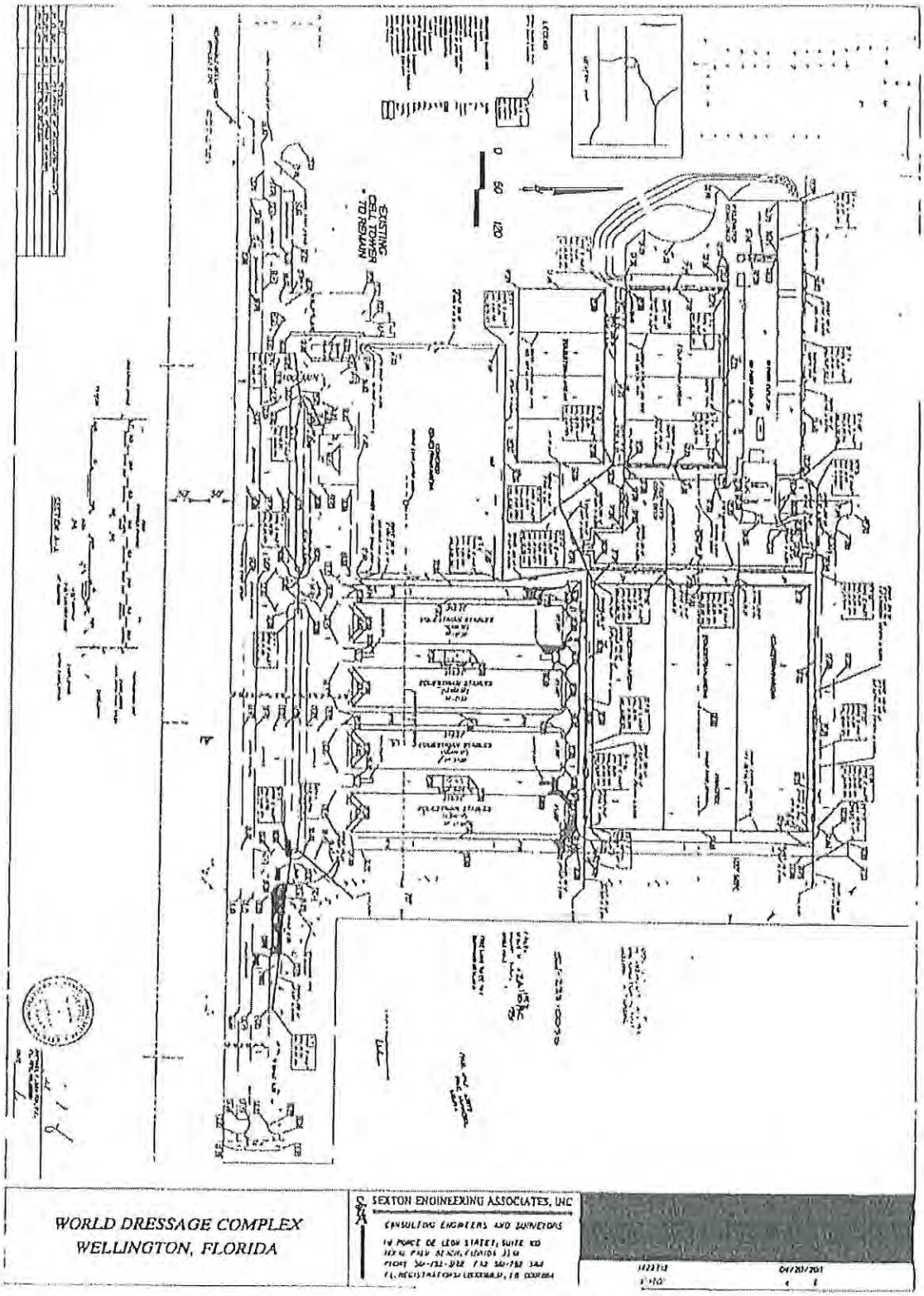

WORLD DRESSAGE COMPLEX
WELLINGTON, FLORIDA
SEXTON ENGINEERING ASSOCIATES, INC
CONSULTING ENGINEERS AND SURVEYORS

EXHIBIT "A"

WELLINGTON

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Planning, Zoning Division
12300 Forest Hill Blvd., Wellington, FL 33414 (561) 791-4000 pzapplications@wellingtonfl.gov

PLANNING & ZONING INTERPRETATION REQUEST

I. PETITIONER OR AGENT INFORMATION

Petitioner(s) if other than owner(s): Charlie & Kim Jacobs / Solar Sportsystems, Inc.,
Address: 3730 Polo Island Dr. #101 13207 Polo Club Rd, Chat/Clos City: Wellington ST FL Zip: _____

Phone. _____ FAX: _____

Agent: * John Shubin, Jeff Bass, Amy Huber

Company Name. Shubin & Bass, P.A.

Address: 46 SW 1st St, 3rd Fl City: Miami ST FL Zip: 33130

Phone. 305.381.6060 FAX: 305.381.9457

*All correspondence will be sent to agent unless otherwise requested.

II. INTERPRETATION REQUEST

A. INTERPRETATION REQUEST (State the Code and Section thereof for which the interpretation is requested. Be specific with respect to the nature of your interpretation request):

Article 10, Sec. 6.10.11(d)

The commercial arena viewing deck/vender/seating area is in excess of 29000 sq. ft. and exceeds the maximum permitted commercial use allowed in the EOZD pursuant to Article 10, Sec. 6.10.11(d.)

See attached appeal.

B. Project Name (if applicable):

Equestrian Village

C. Project Address (if applicable)

LAW OFFICES
SHUBIN & BASS
PROFESSIONAL ASSOCIATION

Via Electronic Mail
and U.S. Mail

January 31, 2012

Ms. Awilda Rodriguez
City Clerk
City of Wellington
12300 Forest Hill Boulevard
Wellington, Florida 33414

Re: Appeal of Administrative Interpretation Re: Equestrian Arena Seating

Dear Ms. Rodriguez:

This correspondence is filed on behalf of Charles and Kimberly Jacobs and Solar Sportsystems, Inc. (collectively, the "Appellants"), the owners of real property located in the City of Wellington at 2730 Polo Island Drive, A-104, Wellington, Florida and 13307 Polo Club Road, C-104 and C-105, Wellington, Florida, respectively, and is intended to supplement the Appellants' previous appeal filed today and attached hereto as Exhibit "A." The Appellants also appeal the administrative interpretation related to the calculation of Floor Area for the Equestrian Arena Seating as depicted in Exhibit "B."("Seating Interpretation").

Please consider this correspondence as the Appellants' appeal of the Seating Interpretation and corresponding request for a public hearing regarding same. If there are forms and/or fees associated with this Administrative Appeal, kindly identify them for us at your earliest convenience, and we will remit them forthwith.

1. **The Equestrian Arena Seating is a "Structure" with Floor Area**

The City's Land Development Regulations, Florida law, and common sense require the reversal of the Subject Interpretation. The City's Code defines "Floor Area" to mean "the ratio of the gross floor area of all structures on a lot to the lot area, excluding vertical core circulation areas for multistory structures. "Art. 3, Ch. 2, City Code. (Emphasis supplied). The City's Code defines "Structure" as "that which is three (3) feet or more in height, built or constructed or erected or tied down having a fixed location on the ground or attached to something having a permanent location on the ground, such as buildings, homes, mobile homes, towers, walls, fences, billboards, shore protection devices, and poster panels." *Id.*

Legally and grammatically, it is clear that the Equestrian Arena Seating is a "structure" as that term is defined by the City Code and commonly understood. By all measurements and all definitions, the Equestrian Arena Seating is – under the City's Code – a "structure" comprising of square feet of Floor Area. The City staff's contrary administrative interpretation is therefore clearly erroneous and must be reversed.

II. The Equestrian Arena Seating is Prohibited by the EOZD District Regulations

The Equestrian Arena is located within the Equestrian Overlay Zoning District ("EOZD"). *See* Exhibit A. The operative district regulations for the EOZD prohibit the development of any commercial structure in excess of 20,000 square feet of gross floor area. *See* Article 10, Sec. 6.10.11(d), City Code. Because the Equestrian Arena exponentially exceeds the ***maximum*** **permitted** commercial development intensity within the EOZD, it is prohibited therein. As such, it was clear and reversible error for the City's administration to approve its development within the EOZD District.

The Appellants reserve the right to supplement this appeal with additional legal authority and arguments if and when the City responds to their Public Records Act requests.

Sincerely yours,



John K. Shubin, Esq.
Jeffrey S. Bass, Esq.
Amy E. Huber, Esq.
For the firm

cc: Jeff Kurtz, Esq., City Attorney
Mr. David Flinchum, Planning & Zoning Manager.

LAW OFFICES
SHUBIN & BASS
PROFESSIONAL ASSOCIATION

Via Electronic Mail
and U.S. Mail

January 31, 2012

Ms. Awilda Rodriguez
City Clerk
City of Wellington
12300 Forest Hill Boulevard
Wellington, Florida 33414

Re: Appeal of Administrative Interpretation Re: Equestrian Arena

Dear Ms. Rodriguez:

This appeal is filed on behalf of Charles and Kimberly Jacobs and Solar Sportsystems, Inc. (collectively, the "Appellants"), the owners of real property located in the City of Wellington at 2730 Polo Island Drive, A-104, Wellington, Florida and 13307 Polo Club Road, C-104 and C-105, Wellington, Florida, respectively. The Appellants are aggrieved and adversely affected by an administrative interpretation, rendered by the City, related to the calculation of Floor Area for an Equestrian Arena that is approximately 80,400 square feet in size (the "Subject Interpretation"). (The Equestrian Arena is described in detail in Exhibit A (attached)). The Subject Interpretation is erroneous and must be reversed.

Please consider this correspondence as the Appellants' appeal of the Subject Interpretation and corresponding request for a public hearing regarding same. If there are forms and/or fees associated with this Administrative Appeal, kindly identify them for us at your earliest convenience, and we will remit them forthwith.

I. **The Equestrian Arena is a "Structure" with 80,400 square feet of Floor Area**

The City's Land Development Regulations, Florida law, and common sense require the reversal of the Subject Interpretation. The City's Code defines "Floor Area" to mean "the ratio of the gross floor area of all structures on a lot to the lot area, excluding vertical core circulation areas for multistory structures. "Art. 3, Ch. 2, City Code. (Emphasis supplied). The City's Code defines "Structure" as "that which is three

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EXHIBIT "A"

(3) feet or more in height, built or constructed or erected or tied down having a fixed location on the ground or attached to something having a permanent location on the ground, such as buildings, homes, mobile homes, towers, walls, fences, billboards, shore protection devices, and poster panels." *Id.*

Legally and grammatically, it is clear that the Equestrian Arena is a "structure" as that term is defined by the City Code and commonly understood. Because the Equestrian Arena is a *single-story* structure – no exception exists for the calculation of its floor area because the only enumerated definitional exception is limited to **multi**story structure which this is not. Under the doctrine of *expressio unius est exclusion alterius*, the Code's express mention of one exclusion directly implies that none other exists. By all measurements and all definitions then, the Equestrian Arena is – under the City's Code - a "structure" comprising 80,400 square feet of Floor Area. The City staff's contrary administrative interpretation is therefore clearly erroneous and must be reversed.

II. The Equestrian Arena is Prohibited by the EOZD District Regulations

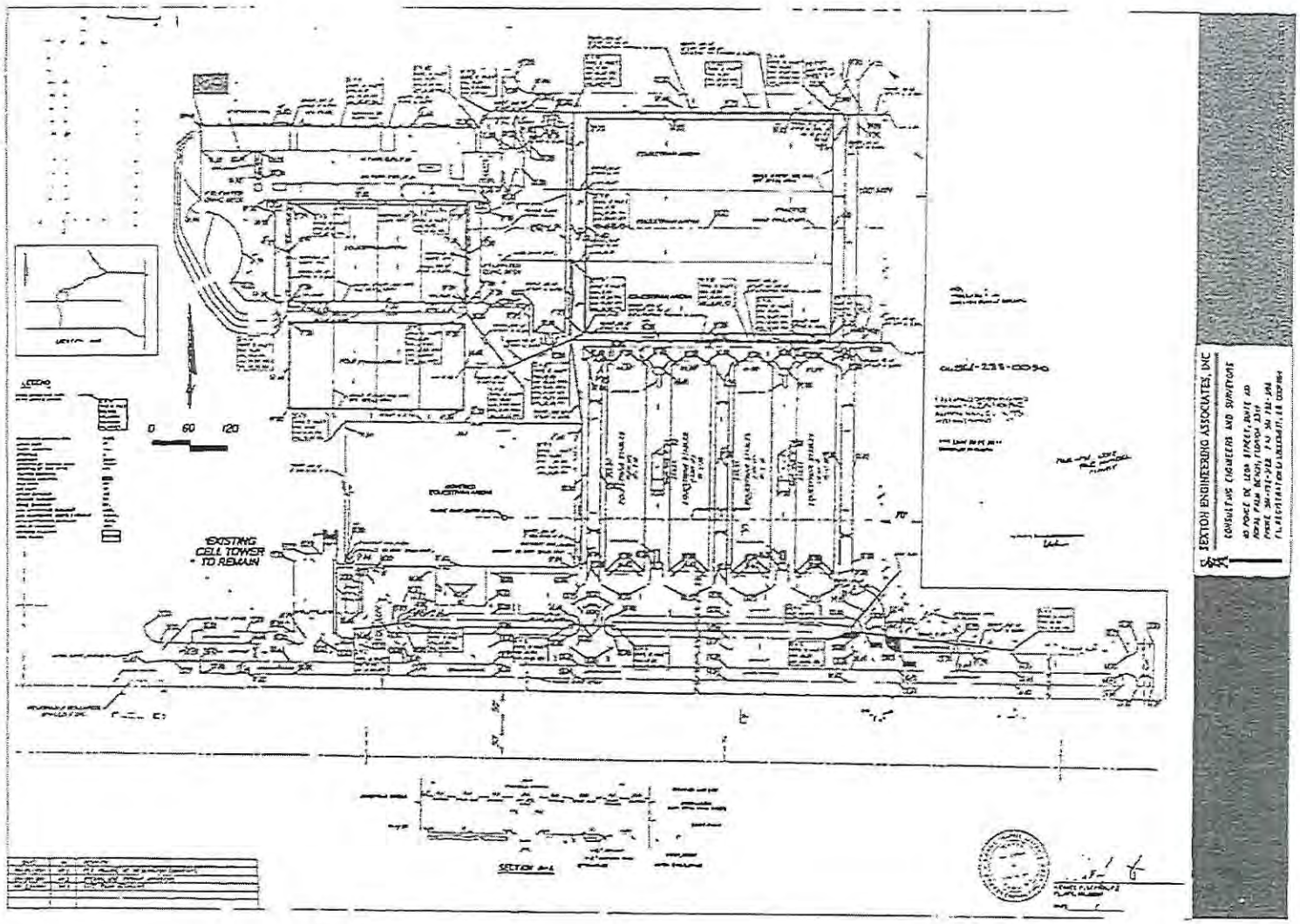
The Equestrian Arena is located within the Equestrian Overlay Zoning District ("EOZD"). *See* Exhibit A. The operative district regulations for the EOZD prohibit the development of any commercial structure in excess of 20,000 square feet of gross floor area. *See* Article 10, Sec. 6.10.11(d), City Code. Because the Equestrian Arena exponentially exceeds the ***maximum*** **permitted** commercial development intensity within the EOZD, it is prohibited therein. As such, it was clear and reversible error for the City's administration to approve its development within the EOZD District.

The Appellants reserve the right to supplement this appeal with additional legal authority and arguments if and when the City responds to their Public Records Act requests.

Sincerely yours,

John K. Shubin, Esq.
Jeffrey S. Bass, Esq.
Amy E. Huber, Esq.
For the firm

cc: Jeff Kurtz, Esq., City Attorney
Mr. David Flinchum, Planning & Zoning Manager


EXISTING
CELL TOWER
TO REMAIN
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SECTION A-1
SEXTON ENGINEERING ASSOCIATES, INC

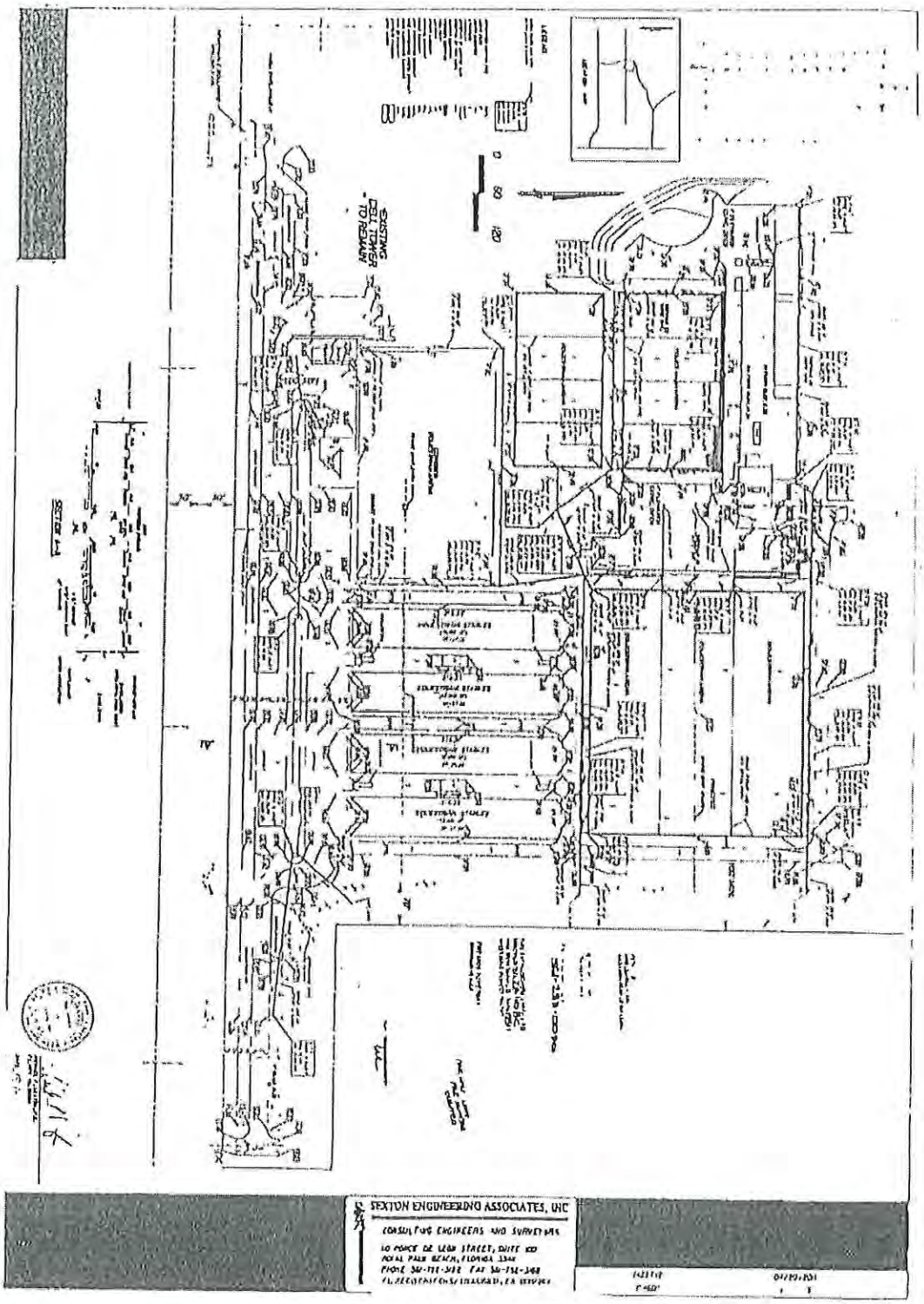

SEXTON ENGINEERING ASSOCIATES, INC
CONSULTING ENGINEERS AND SURVEYORS

EXHIBIT "B"

WELLINGTON

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Planning, Zoning Division
12300 Forest Hill Blvd., Wellington, FL 33414 (561) 791-4000 pzapplications@wellingtonfl.gov

PLANNING & ZONING INTERPRETATION REQUEST

I. PETITIONER OR AGENT INFORMATION

Petitioner(s) if other than owner(s) Charlie & Kim Jacobs / Solar Sportsystems, Inc
Address: 2730 Polo Island Dr, A104 / 13207 Polo Club Rd, 0104/0105 City: Wellington ST FL Zip: _____

Phone: _____ FAX: _____

Agent: * John Shubin, Jeff Bass, Amy Huber
Company Name: Shubin & Bass, P.A.
Address: 46 SW 1st St, 3rd FL City: Miami ST FL Zip: 33130
Phone: 305.381.6060 FAX 305.381.9457

*All correspondence will be sent to agent unless otherwise requested

II. INTERPRETATION REQUEST

A. INTERPRETATION REQUEST (State the Code and Section thereof for which the interpretation is requested Be specific with respect to the nature of your interpretation request)

Section 6.5.B.C.2.

The Commercial Covered Equestrian Arena is approximately 45 feet in height. The maximum permitted height for Commercial Recreation properties is 25 feet. The Commercial Covered Equestrian Arena violates Section 6.5.B.C.2.

See attached appeal

B. Project Name (if applicable):

Equestrian Village

C Project Address (if applicable)

_____

LAW OFFICES
SHUBIN & BASS
PROFESSIONAL ASSOCIATION

Via Hand Delivery

February 1, 2012

Ms. Awilda Rodriguez
City Clerk
City of Wellington
12300 Forest Hill Boulevard
Wellington, Florida 33414

Re: Appeal of Administrative Interpretation Re: Height of Equestrian Arena

Dear Ms. Rodriguez:

This correspondence is filed on behalf of Charles and Kimberly Jacobs and Solar Sportsystems, Inc. (collectively, the "Appellants"), the owners of real property located in the City of Wellington at 2730 Polo Island Drive, A-104, Wellington, Florida and 13307 Polo Club Road, C-104 and C-105, Wellington, Florida, respectively, and is intended to supplement the Appellants' two previous appeals filed yesterday and attached hereto as composite Exhibit "A." The Appellants also appeal the administrative interpretation related to the height of the Equestrian Arena located at Equestrian Village. ("Height Interpretation").

Please consider this correspondence as the Appellants' appeal of the Height Interpretation and corresponding request for a public hearing regarding same. If there are forms and/or fees associated with this Administrative Appeal, kindly identify them for us at your earliest convenience, and we will remit them forthwith.

I. Maximum Building Height

The City's Land Development Regulations, Florida law, and common sense require the reversal of the Subject Interpretation. The City's Code provides for the **maximum building height** of all structures in Section 6.5.1 and 6.5.8 of the City Code. Art. 6, Ch. 5, City Code. (Emphasis supplied). Section 6.5.8.C.2 of the City's Code requires that "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.**" (emphasis supplied.) The Equestrian Village Property is designated Commercial Recreation with a maximum height limitation of twenty-five feet.

II. The Equestrian Arena is Prohibited by the Maximum Height Regulations for Commercial Recreation Properties

The Equestrian Arena is located within the Equestrian Overlay Zoning District ("EOZD") and has a Comprehensive Land Use Plan category of Commercial Recreation. The controlling regulations for CR designated properties prohibits properties in excess of 25 feet. Because the Equestrian Arena exponentially exceeds the ***maximum*** **permitted** height, it is prohibited therein. As such, it was clear and reversible error for the City's administration to approve the height of the arena in excess of 25 feet.

The Appellants reserve the right to supplement this appeal with additional legal authority and arguments if and when the City responds to their Public Records Act requests.

Sincerely yours,

John K. Shubin, Esq.
Jeffrey S. Bass, Esq.
Amy E. Huber, Esq.
For the firm

cc: Jeff Kurtz, Esq., City Attorney
Mr. David Flinchum, Planning & Zoning Manager

LAW OFFICES
SHUBIN & BASS
PROFESSIONAL ASSOCIATION

Via Electronic Mail
and U.S. Mail

January 31, 2012

Ms. Awilda Rodriguez
City Clerk
City of Wellington
12300 Forest Hill Boulevard
Wellington, Florida 33414

Re: Appeal of Administrative Interpretation Re: Equestrian Arena

Dear Ms. Rodriguez:

This appeal is filed on behalf of Charles and Kimberly Jacobs and Solar Sportsystems, Inc. (collectively, the "Appellants"), the owners of real property located in the City of Wellington at 2730 Polo Island Drive, A-104, Wellington, Florida and 13307 Polo Club Road, C-104 and C-105, Wellington, Florida, respectively. The Appellants are aggrieved and adversely affected by an administrative interpretation, rendered by the City, related to the calculation of Floor Area for an Equestrian Arena that is approximately 80,400 square feet in size (the "Subject Interpretation"). (The Equestrian Arena is described in detail in Exhibit A (attached)). The Subject Interpretation is erroneous and must be reversed.

Please consider this correspondence as the Appellants' appeal of the Subject Interpretation and corresponding request for a public hearing regarding same. If there are forms and/or fees associated with this Administrative Appeal, kindly identify them for us at your earliest convenience, and we will remit them forthwith.

I. **The Equestrian Arena is a "Structure" with 80,400 square feet of Floor Area**

The City's Land Development Regulations, Florida law, and common sense require the reversal of the Subject Interpretation. The City's Code defines "Floor Area" to mean "the ratio of the gross floor area of all structures on a lot to the lot area, excluding vertical core circulation areas for multistory structures. "Art. 3, Ch. 2, City Code. (Emphasis supplied). The City's Code defines "Structure" as "that which is three

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COMPOSITE
EXHIBIT "A"

(3) feet or more in height, built or constructed or erected or tied down having a fixed location on the ground or attached to something having a permanent location on the ground, such as buildings, homes, mobile homes, towers, walls, fences, billboards, shore protection devices, and poster panels." *Id.*

Legally and grammatically, it is clear that the Equestrian Arena is a "structure" as that term is defined by the City Code and commonly understood. Because the Equestrian Arena is a *single-story* structure – no exception exists for the calculation of its floor area because the only enumerated definitional exception is limited to multistory structure which this is not. Under the doctrine of *expressio unius est exclusion alterius*, the Code's express mention of one exclusion directly implies that none other exists. By all measurements and all definitions then, the Equestrian Arena is – under the City's Code - a "structure" comprising 80,400 square feet of Floor Area. The City staff's contrary administrative interpretation is therefore clearly erroneous and must be reversed.

II. The Equestrian Arena is Prohibited by the EOZD District Regulations

The Equestrian Arena is located within the Equestrian Overlay Zoning District ("EOZD"). *See* Exhibit A. The operative district regulations for the EOZD prohibit the development of any commercial structure in excess of 20,000 square feet of gross floor area. *See* Article 10, Sec. 6.10.11(d), City Code. Because the Equestrian Arena exponentially exceeds the ***maximum*** **permitted** commercial development intensity within the EOZD, it is prohibited therein. As such, it was clear and reversible error for the City's administration to approve its development within the EOZD District.

The Appellants reserve the right to supplement this appeal with additional legal authority and arguments if and when the City responds to their Public Records Act requests.

Sincerely yours,

John K. Shubin, Esq.
Jeffrey S. Bass, Esq.
Amy E. Huber, Esq.
For the firm

cc: Jeff Kurtz, Esq., City Attorney
Mr. David Flinchum, Planning & Zoning Manager

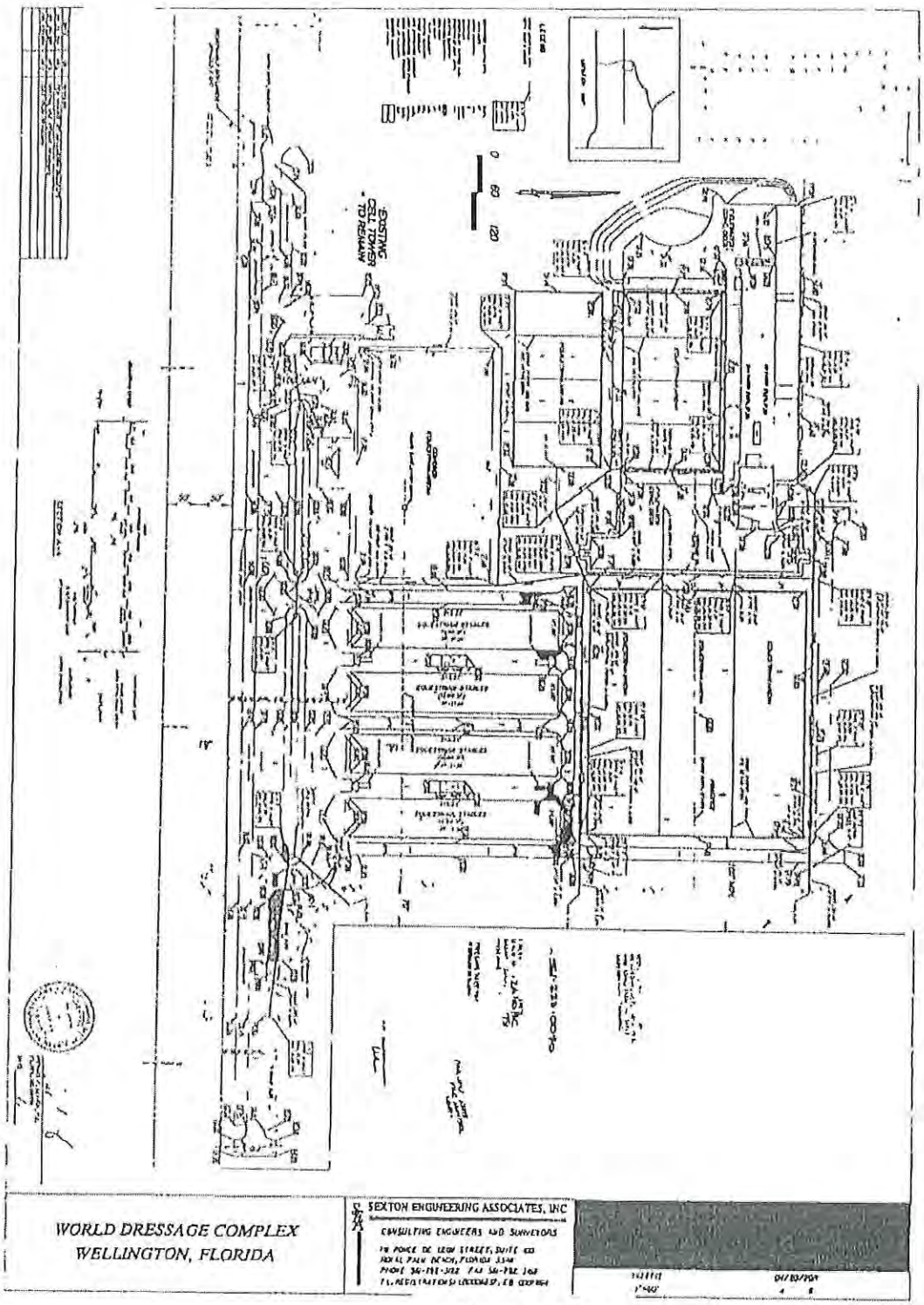

WORLD DRESSAGE COMPLEX
WELLINGTON, FLORIDA
SEXTON ENGINEERING ASSOCIATES, INC
CONSULTING ENGINEERS AND SURVEYORS

EXHIBIT "A"

LAW OFFICES
SHUBIN & BASS
PROFESSIONAL ASSOCIATION

Via Electronic Mail
and U.S. Mail

January 31, 2012

Ms. Awilda Rodriguez
City Clerk
City of Wellington
12300 Forest Hill Boulevard
Wellington, Florida 33414

Re: Appeal of Administrative Interpretation Re: Equestrian Arena Seating

Dear Ms. Rodriguez:

This correspondence is filed on behalf of Charles and Kimberly Jacobs and Solar Sportsystems, Inc. (collectively, the "Appellants"), the owners of real property located in the City of Wellington at 2730 Polo Island Drive, A-104, Wellington, Florida and 13307 Polo Club Road, C-104 and C-105, Wellington, Florida, respectively, and is intended to supplement the Appellants' previous appeal filed today and attached hereto as Exhibit "A." The Appellants also appeal the administrative interpretation related to the calculation of Floor Area for the Equestrian Arena Seating as depicted in Exhibit "B."("Seating Interpretation").

Please consider this correspondence as the Appellants' appeal of the Seating Interpretation and corresponding request for a public hearing regarding same. If there are forms and/or fees associated with this Administrative Appeal, kindly identify them for us at your earliest convenience, and we will remit them forthwith.

1. **The Equestrian Arena Seating is a "Structure" with Floor Area**

The City's Land Development Regulations, Florida law, and common sense require the reversal of the Subject Interpretation. The City's Code defines "Floor Area" to mean "the ratio of the gross floor area of all structures on a lot to the lot area, excluding vertical core circulation areas for multistory structures. "Art. 3, Ch. 2, City Code. (Emphasis supplied). The City's Code defines "Structure" as "that which is three (3) feet or more in height, built or constructed or erected or tied down having a fixed location on the ground or attached to something having a permanent location on the ground, such as buildings, homes, mobile homes, towers, walls, fences, billboards, shore protection devices, and poster panels." *Id.*

Legally and grammatically, it is clear that the Equestrian Arena Seating is a "structure" as that term is defined by the City Code and commonly understood. By all measurements and all definitions, the Equestrian Arena Seating is – under the City's Code – a "structure" comprising of square feet of Floor Area. The City staff's contrary administrative interpretation is therefore clearly erroneous and must be reversed.

II. The Equestrian Arena Seating is Prohibited by the EOZD District Regulations

The Equestrian Arena is located within the Equestrian Overlay Zoning District ("EOZD"). *See* Exhibit A. The operative district regulations for the EOZD prohibit the development of any commercial structure in excess of 20,000 square feet of gross floor area. *See* Article 10, Sec. 6.10.11(d), City Code. Because the Equestrian Arena exponentially exceeds the ***maximum*** **permitted** commercial development intensity within the EOZD, it is prohibited therein. As such, it was clear and reversible error for the City's administration to approve its development within the EOZD District.

The Appellants reserve the right to supplement this appeal with additional legal authority and arguments if and when the City responds to their Public Records Act requests.

Sincerely yours,

John K. Shubin, Esq.
Jeffrey S. Bass, Esq.
Amy E. Huber, Esq.
For the firm

cc: Jeff Kurtz, Esq., City Attorney
Mr. David Flinchum, Planning & Zoning Manager

LAW OFFICES
SHUBIN & BASS
PROFESSIONAL ASSOCIATION

Via Electronic Mail
and U.S. Mail

January 31, 2012

Ms. Awilda Rodriguez
City Clerk
City of Wellington
12300 Forest Hill Boulevard
Wellington, Florida 33414

Re: Appeal of Administrative Interpretation Re: Equestrian Arena

Dear Ms. Rodriguez:

This appeal is filed on behalf of Charles and Kimberly Jacobs and Solar Sportsystems, Inc. (collectively, the "Appellants"), the owners of real property located in the City of Wellington at 2730 Polo Island Drive, A-104, Wellington, Florida and 13307 Polo Club Road, C-104 and C-105, Wellington, Florida, respectively. The Appellants are aggrieved and adversely affected by an administrative interpretation, rendered by the City, related to the calculation of Floor Area for an Equestrian Arena that is approximately 80,400 square feet in size (the "Subject Interpretation"). (The Equestrian Arena is described in detail in Exhibit A (attached)). The Subject Interpretation is erroneous and must be reversed.

Please consider this correspondence as the Appellants' appeal of the Subject Interpretation and corresponding request for a public hearing regarding same. If there are forms and/or fees associated with this Administrative Appeal, kindly identify them for us at your earliest convenience, and we will remit them forthwith.

I. **The Equestrian Arena is a "Structure" with 80,400 square feet of Floor Area**

The City's Land Development Regulations, Florida law, and common sense require the reversal of the Subject Interpretation. The City's Code defines "Floor Area" to mean "the ratio of the gross floor area of all structures on a lot to the lot area, excluding vertical core circulation areas for multistory structures. "Art. 3, Ch. 2, City Code. (Emphasis supplied). The City's Code defines "Structure" as "that which is three

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EXHIBIT "A"

(3) feet or more in height, built or constructed or erected or tied down having a fixed location on the ground or attached to something having a permanent location on the ground, such as buildings, homes, mobile homes, towers, walls, fences. billboards, shore protection devices, and poster panels," *Id.*

Legally and grammatically, it is clear that the Equestrian Arena is a "structure" as that term is defined by the City Code and commonly understood. Because the Equestrian Arena is a *single-story* structure – no exception exists for the calculation of its floor area because the only enumerated definitional exception is limited to multistory structure which this is not. Under the doctrine of *expressio unius est exclusion alterius*, the Code's express mention of one exclusion directly implies that none other exists. By all measurements and all definitions then, the Equestrian Arena is – under the City's Code – a "structure" comprising 80,400 square feet of Floor Area. The City staff's contrary administrative interpretation is therefore clearly erroneous and must be reversed.

II. The Equestrian Arena is Prohibited by the EOZD District Regulations

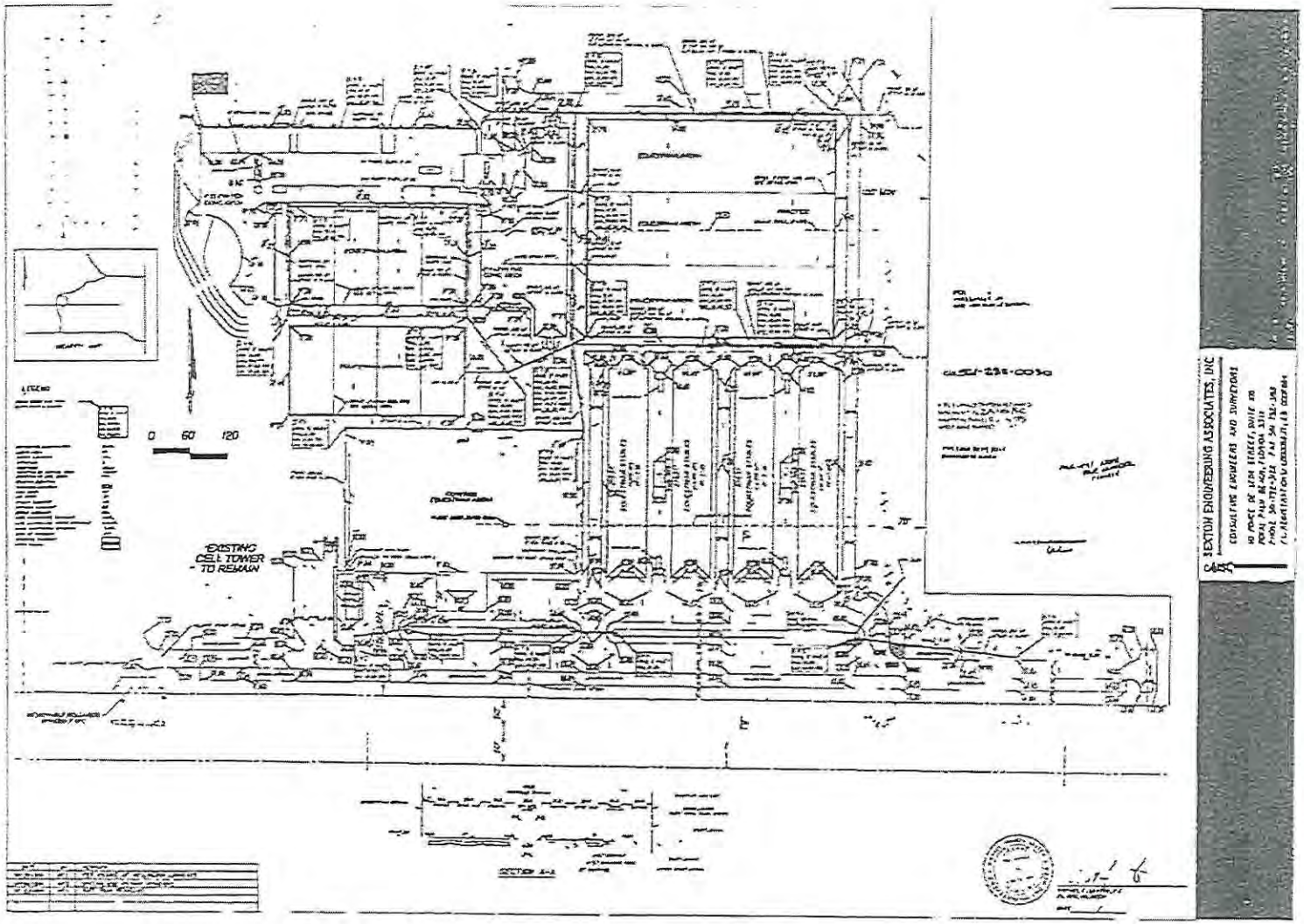
The Equestrian Arena is located within the Equestrian Overlay Zoning District ("EOZD"). *See* Exhibit A. The operative district regulations for the EOZD prohibit the development of any commercial structure in excess of 20,000 square feet of gross floor area. *See* Article 10, Sec. 6.10.11(d), City Code. Because the Equestrian Arena exponentially exceeds the ***maximum*** **permitted** commercial development intensity within the EOZD, it is prohibited therein. As such, it was clear and reversible error for the City's administration to approve its development within the EOZD District.

The Appellants reserve the right to supplement this appeal with additional legal authority and arguments if and when the City responds to their Public Records Act requests.

Sincerely yours,

John K. Shubin, Esq.
Jeffrey S. Bass, Esq.
Amy E. Huber, Esq.
For the firm

cc: Jeff Kurtz, Esq., City Attorney
Mr. David Flinchum, Planning & Zoning Manager


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EXISTING
CELL TOWER
- TO REMAIN
SEXTON ENGINEERING ASSOCIATES, INC

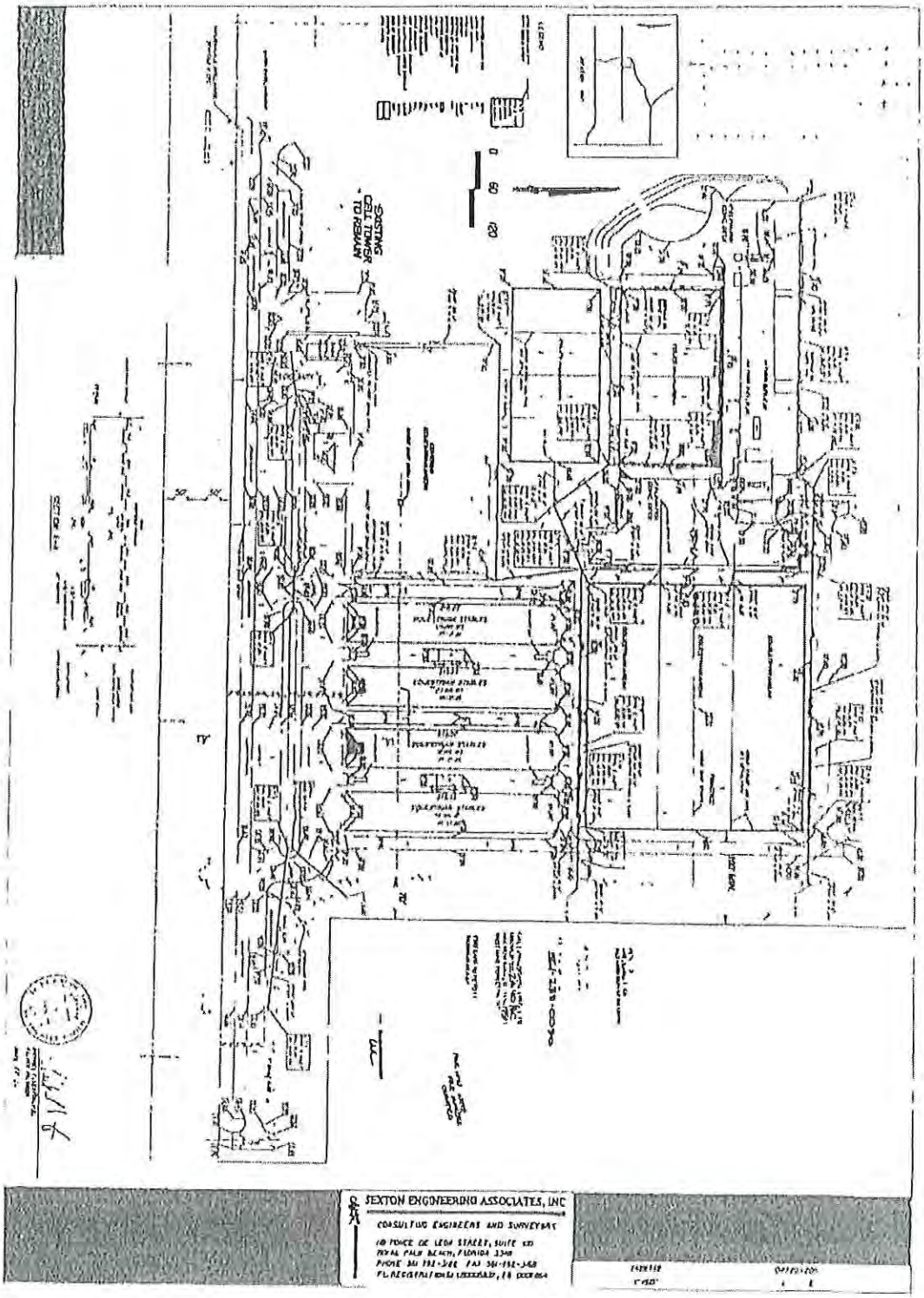

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EXHIBIT "B"

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12300 Forest Hill Blvd., Wellington, FL 33414 (561) 791-4000 pzapplications@wellingtonfl.gov

PLANNING & ZONING INTERPRETATION REQUEST

I. PETITIONER OR AGENT INFORMATION

Petitioner(s) if other than owner(s) Charlie & Kim Jacobs / Solar Sportssystems, Inc.
Address: 2730 Polo Island Dr. A104 / 13207 Polo Club Rd, C104/C105 City: Wellington ST FL Zip _____

Phone _____ FAX _____

Agent: * John Shubin, Jeff Bass, Amy Huber
Company Name: Shubin & Bass, P.A.
Address: 46 SW 1st St, 3rd Floor City: Miami ST FL Zip: 33130
Phone: 305 · 381 · 6060 FAX 305 · 381 · 9457

*All correspondence will be sent to agent unless otherwise requested

II. INTERPRETATION REQUEST

A. INTERPRETATION REQUEST (State the Code and Section thereof for which the interpretation is requested. Be specific with respect to the nature of your interpretation request):
Article 10, section 6.10.11(d).

The Commercial stables, in their entirety - are structures - and exceed the 20,000 commercial use limited in EOZD. The commercial stables violate sec. 6.10.11(d.)

See attached appeal.

B Project Name (If applicable):
Equestrian Village

C Project Address (If applicable):

Amy Huber

From:	Amy Huber
Sent:	Wednesday, April 18, 2012 7:19 PM
To:	'arodriguez@wellingtonfl.gov'; 'jkurtz@wellingtonfl.gov'; 'rbasehart@wellingtonfl.gov'; 'dflinchlm@wellingtonfl.gov'; 'pschofield@wellingtonfl.gov'
Cc:	John Shubin
Subject:	Appeal of Administrative Interpretation - Barn FAR letter
Attachments:	bellissimo barns FAR.docx
Importance:	High

Dear Ms. Rodriguez:

This correspondence is filed on behalf of Charles and Kimberly Jacobs and Solar Sportsystems, Inc. (collectively, the "Appellants"), the owners of real property located in the City of Wellington at 2730 Polo Island Drive, A-104, Wellington, Florida and 13307 Polo Club Road, C-104 and C-105, Wellington, Florida, respectively, and is intended to appeal the administrative interpretation related to the calculation of Floor Area for the east and west barns (the "Subject Interpretation")(A true and correct copy of the Subject Interpretation is attached to this e-mail).

Please consider this correspondence as the Appellants' appeal of the Subject Interpretation and corresponding request for a public hearing regarding same. This appeal is filed in an abundance of caution via e-mail this evening, as we only learned of this Interpretation less than hour ago, despite our numerous public records act requests and specific requests for this exact information. If there are forms and/or fees associated with this Administrative Appeal, kindly identify them for us at your earliest convenience, and we will remit them forthwith.

I. **The Stables in their Entirety are Structures with Floor Area**

The City's Land Development Regulations, Florida law, and common sense require the reversal of the Subject Interpretation. The City's Code defines "Floor Area" to mean "the ratio of the gross floor area of all structures on a lot to the lot area, excluding vertical core circulation areas for multistory structures. "Art. 3, Ch. 2, City Code. (Emphasis supplied). The City's Code defines "Structure" as "that which is three (3) feet or more in height, built or constructed or erected or tied down having a fixed location on the ground or attached to something having a permanent location on the ground, such as buildings, homes, mobile homes, towers, walls, fences, billboards, shore protection devices, and poster panels." *Id.*

Legally and grammatically, it is clear that the Stables – in their entirety - are "structures" as that term is defined by the City Code and commonly understood. By all measurements and all definitions, the entire floor area of each stable is – under the City's Code – a "structure" comprising of square feet of Floor Area. The City staff's contrary administrative interpretation is therefore clearly erroneous and must be reversed.

II. **Commercial Use in Excess of 20,000 sq. ft is Prohibited by the EOZD District Regulations**

The Stables are located within the Equestrian Overlay Zoning District ("EOZD"). The operative district regulations for the EOZD prohibit the development of any commercial use in excess of 20,000 square feet of gross floor area. *See* Article 10, Sec. 6.10.11(d), City Code. Because the

Stables exponentially exceed the ***maximum* permitted** commercial development intensity within the EOZD, it is prohibited therein. As such, it was clear and reversible error for the City's administration to approve its development within the EOZD District.

The Appellants reserve the right to supplement this appeal with additional legal authority and arguments if and when the City provides us with the additional documentation requested as they were required to do by law.

Thank you for your anticipated attention to this matter.

Amy E. Huber, Esq.
Shubin & Bass, P.A.
46 S.W. 1st Street
Third Floor
Miami, Florida 33130
ahuber@shubinbass.com
Tel. (305) 381-6060
Fax (305) 381-9457

Attention: The information contained in this e-mail message is confidential information and privileged. The information contained herein is intended solely for the use of the individual(s) named above. If the recipient of this message is not the intended recipient, you are hereby notified that any distribution or dissemination of this communication is strictly prohibited. In the event that you have received this communication in error, please contact the sender by reply e-mail and destroy any and all copies of the original message.

From: Jeff S. Kurtz [mailto:jkurtz@wellingtonfl.gov]
Sent: Wednesday, April 18, 2012 6:50 PM
To: John Shubin; Amy Huber
Subject: FW: Barn FAR letter

Copy of barn FAR letter.

From: Robert Basehart
Sent: Wednesday, April 18, 2012 6:26 PM
To: Jeff S. Kurtz
Subject: Barn FAR letter

Robert Basehart, AICP
Growth Management Director
Wellington, Florida
12300 Forest Hill Boulevard, Wellington, Fl 33414
561/753-2578 FAX 561/791-4045

Email addresses are public record under Florida Law and are not exempt from public records requirements. Please consider your e-mail address to be public if you choose to send us public records requests. Do not send electronic mail to this entity. Instead, contact this office by telephone or in writing.

WELLINGTON

A GREAT HOMETOWN

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

Manager
Paul Schofield

March 20, 2012

Mark Bellissimo, Managing Member
Far Niente Stables II, LLC
114440 Pierson Road
Wellington, Florida 33414

SUBJECT: STABLE STRUCTURES AT EQUESTRIAN VILLAGE EQUESTRIAN VILLAGE PROPERTY (aka POLO VILLAGE II); PROPERTY (59.29 ACRES) LOCATED AT N.E. CORNER OF SOUTH SHORE BLVD & PIERSON RD., WELLINGTON.

Dear Mr. Bellissimo:

This letter is to inform you that after having reviewed the physical construction of the recently installed stable structures at the above referenced property it is our determination the majority of the area under roof in each structure must be counted as floor area.

Originally, descriptions that you gave indicated the interior stalls would not be attached to structural components supporting the roofs and the top of the stalls would be substantially below the eve line of the buildings. This would have resulted in a true and readily apparent separation between the roof structure and the individual horse stalls. It was understood the stable structures would have no walls on any side. We were told that stables & structures would be constructed just like the stables at the Jim Brandon Equestrian Center owned and operated by Palm Beach County. After having visited the Jim Brandon Center, we were in agreement that your proposed stable buildings could qualify to not count as building square footage for the purpose of calculating the floor area ratio for the overall Equestrian Village site.

After having visited your site and inspected the completed stable buildings, we have concluded what has been constructed is not consistent with our earlier understanding, and that the buildings do not meet the test for exclusion from floor area calculations. The exterior face of the structure constitutes a wall system both visually and as a practical matter a part of the overall structural support. The end walls absolutely enclose the structure and the stable units extend up to essentially eave level and are physically attached to structural components. Since the majority of the sides of the structure are enclosed by walls, the majority of the interior area will be considered as building floor area.

I am willing to exclude from the floor area calculations the unenclosed patio areas under roof at both ends of the building, as well as the east/west pass-through isles between the banks of stalls (since they do not have side walls).

This accommodation will reduce the floor area of the stable buildings to approximately 62.4% of the area under roof, which will result in a calculated floor area of 12,295 square feet per building for the19, 698 sq. ft per building area under roof. I certainly invite you to provide more exact calculations and am open to making reasonable adjustments with any supportive documentation you may provide.

Please also be advised that in the event you believe that my determination is not correct, you have the right to appeal it to the Planning, Zoning & Appeals Board. They are empowered to make binding interpretations on the provisions of the Village's Land Development Code.

If you have any questions relative to any of the information provided in this letter, please do not hesitate to contact me..

Very truly yours,

Robert E. Basehart, AICP
Growth Management Director

Cc: Paul Schofield, Village Manager
Jim Barnes, Director of Operations
Jeff Kurtz, Village Attorney
David Flinchum, Planning & Zoning Manager
Jacek Tomasik, Building Official

WELLINGTON

A GREAT HOMETOWN

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

Manager
Paul Schofield

December 24, 2013

John Shubin, Esq./Jeff Bass, Esq./Amy Huber, Esq.
Law Offices of Shubin & Bass
45 S.W. 1st Street, 3rd Floor
Miami, Florida 33130
Jupiter, Florida 33458

SUBJECT: Requests for Planning & Zoning interpretation related to Chapter 10, Section 6.10.11(D) and Article 6, Section 6.5.8.C.2 of the Village of Wellington land Development Regulations. Issues addressed are the size of the barns (aggregate), covered arena, viewing deck/vender area/seating area at the property/project known as the Equestrian Village.

Dear Msrs. Shubin & Bass and Ms. Huber:

This letter is in response to your request for interpretation of the above referenced provisions of the Village of Wellington Land Development Regulations. Your request for interpretation includes an opinion that the existing facilities referenced above were approved erroneously, because they do not comply with the Code provisions referenced. The Village staff interpretations of the subject provisions are as follows:

Chapter 10, Section 6.10.11(D):

This provision is a subsection of Section 6.10.11, which provides Development Standards for commercial uses within the Equestrian Overlay Zoning District (EOZD). The subsection in question provides that single (individual) uses governed therein shall not exceed a gross floor area of twenty thousand (20,000) square feet. You note that several uses of the Equestrian Village site exceed 20,000 square feet. In your various request forms you include the stables, the covered equestrian arena structure, viewing deck, and the outdoor seating/vendor areas.

The staff's interpretation of the provisions of Section 6.10.11 is that the intent of this Section is to regulate retail development allowed within the EOZD, and that the size limitation provided in Subsection 6.10.11(D) does not apply to the structures or uses that are referenced in your request. This interpretation is supported by the intent statement at the beginning of the Section, where it is stated that commercial uses regulated by this section shall be limited to those that provide goods and services that serve the equestrian and agricultural community. This is repeated in Subsection B (Orientation and Scale) where it indicates that commercial uses should be oriented toward agricultural and equestrian uses of a community serving nature, which implies retail and service oriented uses. Further, in Subsection C (Architecture) it is stated that commercial buildings and centers should be of a mass, bulk and style that is consistent with equestrian uses such as barns and stables. This is a clear indication that structures that serve agricultural or equestrian activities and uses such as barns, stables, arenas, spectator areas and uses are not intended to be considered commercial for the application of the development standards of this section.

EXHIBIT
tabbies
B

This interpretation is not one that has been made as a part of the review and permitting for the Equestrian Village project. I am attaching a copy of an interpretation/policy memo that was made in 2004. Although the actual Section number has changed slightly due to LDR amendments to the EOZD, the subject matter is the same provision which you are currently addressing.

The one part of your inquiry that we believe is subject to the 20,000 square foot limitation are retail uses. Subsection 6.10.11(D) provides that the gross floor area limitation applies to any single use on the site. This would apply to any individual business, but does not limit the total floor area of any category of use cumulatively. Therefore, in the vendor area, the total floor area allowed for any individual vendor space is 20,000 square feet, but the cumulative floor area for vendors is not limited by this provision. The same would also apply to restaurant spaces. No individual restaurant or food service space can exceed 20,000 square feet, but the cumulative total of restaurant space is not regulated by this provision. Barns are not regulated by this provision, as noted above. However, even if they were, each barn would be regulated individually. Since the two constructed barns are both less than 20,000 square feet in size, there would be no Code issue.

It is important to note the equestrian arena is a structure or use which is not regulated by the provisions of Section 6.10.11(D). Further, as you are aware, it is the staff's opinion that the structure in question has no floor area, by definition. In the past you have expressed disagreement with this interpretation. However, that issue has not been addressed in your current request for interpretation. Therefore, it is our understanding that you are not currently pursuing the issues of the floor area calculation for the barn structure or the covered arena structure.

Article 6, Section 6.5.8.C.2:

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.

If you have any questions regarding this matter or action, please do not hesitate to contact me.

Very truly yours,

Robert E. Basehart, AICP
Project Director

Cc: Paul Schofield, Village Manager
Tim Stillings, Planning and Development Services Director
Laurie Cohen, Village Attorney
David Flinchum, Planning & Zoning Manager

VILLAGE OF WELLINGTON
Planning, Zoning & Building Department

Policy Number P&D-2004-000-01
Date Approved: June 17, 2004

SUBJECT:	Commercial developments within the Equestrian Overlay Zoning District (EOZD)
CROSS-REFERENCE:	Section 6.10.K. of the Unified Land Development Code (ULDC).
PURPOSE:	To clarify what type of commercial development is governed by the Commercial Development Standard of the EOZD.
POLICY:	Section 6.10.K. of the ULDC outlines land development regulations for commercial development within the EOZD. Included in Section 6.10.K. are regulations for: 1. Planned Development Rezoning; 2. Orientation and Scale; 3. Architecture; 4. Size; 5. Hours of Operation; 6. Lighting; 7. Outdoor Display and Storage; and 8. Buffers. The intent of Section 6.10.K. was to specifically regulate commercial retail development. There were no intentions for this provision to apply to commercial stables.
PROCEDURE:	The Planning and Zoning Division will review petitions for commercial developments within the EOZD in according with this policy.

Paul Schofield, AICP
Community Service Director

Caryn Gardner-Young, AICP
Planning and Zoning Director

ShubinBass
PROFESSIONAL ASSOCIATION

Via Electronic Mail
and Federal Express

January 28, 2014

Mr. Robert Basehart, AICP
Village of Wellington
12300 Forest Hill Boulevard
Wellington, Florida 33414

Re: Appeal of Administrative Interpretations dated December 24, 2013 re: Equestrian Village

Dear Mr. Basehart:

These appeals are filed on behalf of Charles and Kimberly Jacob, 2730 Polo Island Drive, A-104, Wellington, Florida and Solar Sportsystems, Inc., 13307 Polo Club Road, C-104 and C-105, Wellington, Florida (collectively, the "Appellants") the owners of real property located within the Village of Wellington. The Appellants are aggrieved and adversely affected by various administrative interpretations, rendered by the Village, related to the approvals granted to Equestrian Village. The Appellants re-file these appeals of the interpretations presented by the Village of Wellington dated December 24, 2013 (the Interpretations") under protest, and maintain that the appeals previously filed in 2012 remain valid, timely and effective and should have been processed and scheduled for hearing by the Village of Wellington.[1] Moreover, the Appellants renew their objections to being subjected to an additional process, as well as the Village's new and revised interpretations that differ from those interpretations previously provided during the public hearing and review process for Equestrian Village.

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[1] A true and correct copy of the December 24, 2013 Interpretations letter is attached hereto as Exhibit "A" and incorporated herein. A true and correct copy of the Appellants December 6, 2013 correspondence with attachments including all of the prior appeals, is attached hereto as Exhibit "B" and incorporated herein. A true and correct copy of Ordinance No. 2009-17 is attached hereto as Exhibit "C" and incorporated herein.



To eliminate any potential confusion, the Appellants are appealing the interpretation of the Village Code and its application to various elements of Equestrian Village as outlined below. Enclosed please find a check for Thirty Five Hundred Dollars ($3500.00) for the filing fee of each of these appeals. If additional forms or fees are required, please advise and we will submit them immediately upon request.

I. The Administrative Interpretation is Clearly Erroneous and Must be Reversed Because the Plain Language of the Code Limits Commercial Use to a 20,000 Square Feet Maximum within the EOZD

The Appellants contend that the Code limits commercial development within the Equestrian Overlay Zoning District ("EOZD") to 20,000 square feet; the Village Staff believes that the Code does not limit commercial development to 20,000 square feet; these administrative appeals follow from this difference in reading the Code.

The Appellants maintain that Section 6.10.11.D of the Code is plain, clear, and unambiguous and that it plainly, clearly, and unambiguously limits the size of commercial use to no greater than 20,000 square feet. The text of the Code provides as follows:

> **Section 6.10.11 – Commercial Development Standards.** Commercial development shall be limited to those uses intended to serve the needs of the surrounding equestrian and agricultural communities and shall be determined by such factors as size of the use and types of goods and services to be offered. In addition, commercial development shall be designed in a manner that recognizes its location within the Equestrian Preservation Areas. Commercial uses may be established subject to the requirements of this Article and these land development regulations. All permitted and conditional uses within a planned development shall be consistent with the requirements of this Section.
>
> **Section 6.10.11(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.

See LDRs § 6.10.11(D) (emphasis supplied).

Thus, the Appellants believe that – pursuant to the plain language quoted above - one may not develop commercial uses in excess of 20,000 square feet based on the plain language of the Code itself. The Village staff evidently does not believe that the Code means what it says. To the contrary, the Village staff has rendered an interpretation that authorizes commercial uses in excess of 20,000 square feet only applies to retail uses and does not apply at all so long as the footprint of each commercial use is below the 20,000 square foot threshold. Simply put, we believe that the Village's interpretation is clearly erroneous because it conflicts with the plain language of the Code and it leads to absurd results. Under the Staff's interpretation, one could presumptively develop 200,000 square feet commercial retail on one tract of land within the EOZD so long as each retailer was 20,000 square feet or less. This makes no sense whatsoever and it is inconsistent with the plain language and intent of the Code that clearly seeks to limit commercial use within the EOZD.

The correctness of this conclusion is confirmed by reference to the definition of the word "use." Within the Village Code, "use" means "any purpose for which a building or other structure or a tract of land may be designed, arranged, or occupied; or any activity, occupation, business or operation carried on, or intended to be carried on, in a building or other structures or on a tract of land." *See* Article 3, Chapter 2 Definitions, Village Code. The word "any" means "all" – it is unambiguous and all inclusive. *See State v. Mark Marks, P.A.*, 833 So. 2d 249, 251 (Fla. 4th DCA 2002) (citing *Clark v. State*, 790 So. 2d 1030, 1032 (Fla.2001)). Thus, if and when an owner places in excess of 20,000 square feet of commercial use on land located within the EOZD, the Code is violated. To the extent that Staff seeks to countenance that violation by interpretation, its interpretation conflicts with the Code and must be reversed.

Moreover, all of these commercial structures were part of a request for a single Commercial Use – a Commercial Equestrian Arena. As such, this **single use** is limited to 20,000 square feet. Instead this **single use** actually includes a variety of commercial structures and commercial uses each exceeding the 20,000 square feet – including an 80,400 square feet commercial arena, 39,396 square feet of commercial stables, and approximately 40,000 square feet commercial seating, viewing and vendor deck – totaling in excess of 159,000 square feet (almost 8 times the maximum size permitted in the EOZD).

It is a basic principle of municipal law that a municipality must enforce the plain language of its codes as written. *See City of Jacksonville v. Sohn*, 616 So. 2d 1173,

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1174 (Fla. 1st DCA 1993) ("[A]ny action taken by a municipality must be in conformity to the ordinances of the municipality."); *accord O'Connor v. Dade Cnty.*, 410 So. 2d 605, 605 (quashing circuit court order upholding county commission zoning decision where commission did not follow procedure clearly mandated by the county code). It is equally basic that one should not construe the language of a zoning code to render it meaningless and each part of an ordinance must be given meaning. *See Raymond James Fin. Servs. v. Phillips,*126 So. 3d 186, 2013 WL 2096252, *4 (Fla. 2013).

The Village staff believes that Section 6.10.11.D does not limit the size of any of the elements of Equestrian Village, including the commercial covered equestrian arena, the commercial stables, or the commercial seating/viewing deck/vendor area. Thus, the Appellants appeal the Village's interpretation that Section 6.10.11(D) does not apply to any of the structures at Equestrian Village, because Section 6.10.11(D) only applies to "retail" uses in the EOZD. The plain text of the Code does not limit the size requirement to retail. It is error for Staff to administratively add language to a zoning code that does not appear within it. *See Mandelstam v. City Comm'n of City of South Miami*, 539 So. 2d 1139, 1140 (Fla. 3d DCA 1986).

The Village relies on a Memorandum dated June 17, 2004 to clarify that the restrictions are only intended to regulate commercial retail development and not the arena, stables, or the seating/viewing deck/vendor area. However, this Memorandum predates Ordinance No. 2009-17 which modified and amended the EOZD regulations. It is axiomatic that one cannot amend the zoning code other than by Ordinance. *See White v. Town of Inglis*, 988 So. 2d 163, 164 (Fla. 1st DCA 2008) ("A resolution cannot be substituted for and have the force and effect of an ordinance, nor can a resolution supply initial authority which is required to be vested by ordinance.") (citing *Wallace v. Leahy*, 496 So. 2d 970, 971 (Fla. 3d DCA 1986)); *Brown v. City of St. Petersburg*, 153 So. 140 (Fla. 1933); *Carlton v. Jones*, 158 So. 170, 170 (1934) ("An act which is required to be accomplished by ordinance may not be accomplished by resolution."). To be sure, the Code cannot be amended by interpretation. *See Mandelstam*, 539 So. 2d at 1140.

If the Village intended to exclude all commercial uses other than retail uses, it would have done so in the adoption of this Ordinance. The operative district regulations for the EOZD prohibit the development of any commercial structure in excess of 20,000 square feet of gross floor area. *See* Article 10, Sec. 6.10.11(d),

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Village Code and does not exclude stables, arenas or other commercial structures or uses.

It is also important to note that during the two years that this matter has been pending, and that the Appellants have been meeting and speaking with the Village at no time has this memorandum been produced, provided, or referenced prior to the December 24, 2103 letter. The Appellants have filed numerous Public Records Act Requests with the Village over the course of the last two (2) years and this Memorandum was never produced in any of the numerous responses to our requests. Moreover, this Memorandum was never referenced or discussed at any of the numerous public hearings that were held over the last two (2) years on this matter.

The Appellants reject the Village's Interpretations and file these appeals of the Village's Interpretations that the Commercial Equestrian Arena, Commercial Stables, the Commercial Viewing Deck and Commercial Seating and Vendor Deck are not "Commercial Structures" regulated by Sec. 6.10.11(d). We also appeal the interpretation of the calculation of floor area for each of these structures. We continue to maintain that each of these uses exponentially exceeds the ***maximum*** commercial development intensity of the EOZD, and is prohibited therein. As such, it was error for the Village's administration to approve this development, and each of these structures, within the EOZD.

In an effort to provide more specificity for each of these appeals, please see the subsections below. Appellants reserve the right to supplement this appeal prior to hearing.

A. The Equestrian Arena is a "Structure" with 80,400 square feet of Floor Area

On a housekeeping note, the Village's December 24, 2013 correspondence states that our request for interpretation or appeals do not address the calculation of Floor Area for the Commercial Equestrian Arena; however, all of correspondence and appeal dated January 31, 2012 specifically appeals the Village's determination that the Commercial Equestrian Arena does not count as Floor Area.

The Village's Land Development Regulations, Florida law, and common sense require the reversal of the interpretation that the Commercial Equestrian Arena does not have any floor area. Particularly, the Village's Code defines "Floor Area" to mean "the

ratio of the gross floor area of all structures on a lot to the lot area, excluding vertical core circulation areas for multistory structures." Relatedly, the Village's Code defines "Structure" as "that which is three (3) feet or more in height, built or constructed or erected or tied down having a fixed location on the ground or attached to something having a permanent location on the ground, such as buildings, homes, mobile homes, towers, walls, fences, billboards, shore protection devices, and poster panels." *See* Village Code Art. 3, Ch. 2.

As clearly revealed in the site plans – and as constructed - the Equestrian Arena is a *single-story* structure. Legally and grammatically, it is clear that the Equestrian Arena is a "structure" as that term is defined by the Village Code and commonly understood. Because the Equestrian Arena is a *single-story* structure – no exception exists for the calculation of its "core circulation area" as such an exemption is exclusively limited to "**multi**story" structures and therefore not applicable here. By all measurements and all definitions, the Equestrian Arena is — under the Village's Code – a "structure" comprising 80,400 square feet of Floor Area.

B. The Equestrian Arena is Prohibited by the EOZD District Regulations

The Equestrian Arena is located within the EOZD. The operative district regulations for the EOZD prohibit the development of any commercial structure in excess of 20,000 square feet of gross floor area. *See* Article 10, Sec. 6.10.11(d), Village Code. Because the Equestrian Arena exponentially exceeds the ***maximum*** commercial development intensity of the EOZD, it is prohibited therein. As such, it was error for the Village's administration to approve its development within the EOZD District.

Moreover, it is important to note here, that a covered *private* equestrian arena is prohibited on Commercial Recreation properties within in the EOZD pursuant to Sec. 6.10.7, Table C as adopted through Ordinance No. 2009-17. Accordingly, the covered equestrian arena could only be approved through the compatibility determination hearing for a commercial equestrian arena and the permits issued for the covered arena prior to the hearing were void as a matter of law and in error.

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C. The Commercial Stables in their Entirety each have a Floor Area of 19,698 square feet

The Village's Land Development Regulations, Florida law, and common sense require the reversal of the Subject Interpretation. The Village's Code defines "Floor Area" to mean "the ratio of the gross floor area of all structures on a lot to the lot area, excluding vertical core circulation areas for **multi**story structures. "Art. 3, Ch. 2, Village Code. (Emphasis supplied). The Village's Code defines "Structure" as "that which is three (3) feet or more in height, built or constructed or erected or tied down having a fixed location on the ground or attached to something having a permanent location on the ground, such as buildings, homes, mobile homes, towers, walls, fences, billboards, shore protection devices, and poster panels." *Id.*

Legally and grammatically, it is clear that the Stables – in their entirety - are "structures" as that term is defined by the Village Code and commonly understood. By all measurements and all definitions, the entire floor area of each stable is – under the Village's Code – a "structure" comprising of square feet of Floor Area. The Village staff's contrary administrative interpretation is therefore clearly erroneous and must be reversed.

The Village's March 20, 2012 letter regarding the calculation of the barns offers an "accommodation" to the Developer to reduce the floor area of each of the stables to approximately 62.4% because it is "willing to exclude the unenclosed patio areas under roof as well as the pass–through isles." This "accommodation" is erroneous and each stable in its entirety has a floor area of 19,698 square feet.

D. Commercial Use in Excess of 20,000 sq. ft is Prohibited by the EOZD District Regulations

The Stables are located within the Equestrian Overlay Zoning District ("EOZD"). The operative district regulations for the EOZD prohibit the development of any commercial **use** in excess of 20,000 square feet of gross floor area. *See* Article 10, Sec. 6.10.11(d), Village Code. Because the Stables exponentially exceed the ***maximum* permitted** commercial development intensity within the EOZD, it is prohibited therein. As such, it was clear and reversible error for the Village's Staff to approve the development of the commercial stables within the EOZD District.

E. The Commercial Viewing Deck, Commercial Seating and Vendor Deck is "Structure" with Floor Area

The Village's Land Development Regulations, Florida law, and common sense require the reversal of the Subject Interpretation. The Village's Code defines "Floor Area" to mean "the ratio of the gross floor area of all structures on a lot to the lot area, excluding vertical core circulation areas for **multi**story structures. "Art. 3, Ch. 2, Village Code. (Emphasis supplied). The Village's Code defines "Structure" as "that which is three (3) feet or more in height, built or constructed or erected or tied down having a fixed location on the ground or attached to something having a permanent location on the ground, such as buildings, homes, mobile homes, towers, walls, fences, billboards, shore protection devices, and poster panels." *Id.*

Legally and grammatically, it is clear that the Commercial Viewing Deck, Commercial Seating and Vendor Deck is a "structure" as that term is defined by the Village Code and commonly understood. By all measurements and all definitions, the Equestrian Arena Seating is – under the Village's Code – a "structure" comprising of square feet of Floor Area. The Village staff's contrary administrative interpretation is therefore clearly erroneous and must be reversed.

F. The Commercial Viewing Deck, Commercial Seating and Vendor Deck is Prohibited by the EOZD Regulations

The Commercial Viewing Deck, Commercial Seating and Vendor Deck is located within the Equestrian Overlay Zoning District ("EOZD"). The operative district regulations for the EOZD prohibit the development of any commercial structure in excess of 20,000 square feet of gross floor area. *See* Article 10, Sec. 6.10.11(d), Village Code. Because the Commercial Viewing Deck, Commercial Seating and Vendor Deck exponentially exceed the ***maximum* permitted** commercial development intensity within the EOZD, it is prohibited therein. As such, it was clear and reversible error for the Village's Staff to approve its development within the EOZD.

II. The Administrative Interpretation is Clearly Erroneous and Must be Reversed Because the Plain Language of the Code Limits the Height for Commercial Recreation Properties to Twenty-Five (25) Feet

The Appellants renew their objections and renew their appeal to Village's interpretation that Section 6.5.8.C.2 does not apply to properties within the EOZD.

The plain language of the zoning regulations applicable to the Equestrian Village property limits the height of structures built thereon to twenty-five (25) feet. The Code sets the height limit this way:

> **Section 6.5.8 (C.2) - Building height.** 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**.

LDRs § 6.5.8(C.2) (emphasis added).

The record facts incontestably show that (1) the Equestrian Village property is designated Commercial Recreation, and (2) the covered arena is built to a height in excess of thirty-five (35) feet. As such, it was clear reversible error for the Village to approve a structure with a height well in excess of twenty-five (25) feet.

The Village relies on Ordinance No. 2009-17 for its interpretation that the twenty-five (25) foot height limit for Commercial Recreation properties does not apply within the EOZD. Specifically, the Village states that if there is a conflict within provisions of the Village Code, then the regulations in Chapter 10 prevail. Accordingly, the Village states that the height limitation for Commercial Recreation properties in the EOZD is thirty-five (35) feet, and the Commercial Equestrian Arena does not exceed the height limitation.

The Village's Land Development Regulations, Florida law, and common sense require the reversal of the Subject Interpretation. The Village's Code provides for the **maximum building height** of **all structures** in Section 6.5.1 and 6.5.8 of the Village Code. Art. 6. Ch. 5. Village Code. (Emphasis supplied). The Equestrian Arena is located within the EOZD and has a Comprehensive Land Use Plan category of Commercial Recreation. The controlling regulations for CR designated properties prohibits properties in excess of twenty-five (25) feet. Because the Equestrian Arena

exponentially exceeds the maximum permitted height, it is prohibited therein. As such, it was clear and reversible error for the Village's Staff to approve the height of the arena in excess of twenty-five (25) feet.

The Appellants reserve the right to supplement these appeals with additional facts, legal authority and legal arguments prior to the hearing.

Sincerely yours,

Amy E. Huber
For the firm

cc: Laurie Cohen, Esq.
Claudio Riedi, Esq.
Mr. Paul Schofield
Mrs. Awilda Rodriguez
Mr. Tim Stillings

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Filing # 12789255 Electronically Filed 04/22/2014 03:22:10 PM

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

POLO FIELD ONE, LLC, STADIUM NORTH, LLC, STADIUM SOUTH, LLC, FAR NIENTE STABLES II, LLC and EQUESTRIAN SPORT PRODUCTIONS, LLC

Plaintiffs,

v.

CHARLES JACOBS and KIMBERLY JACOBS, Husband and Wife, SOLAR SPORTSYSTEMS, INC., a New York Corporation and THE VILLAGE OF WELLINGTON, a Municipal Corporation of the State of Florida

Defendants.

_____/

CASE NO. 502014CA003331XXXXMB

AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs, Polo Field One, LLC, Stadium North, LLC, Stadium South, LLC, Far Niente Stables II, LLC, and Equestrian Sport Productions, LLC (collectively, the "Owners") by and through their undersigned counsel, sue Defendants, Charles Jacobs, Kimberly Jacobs, Solar Sportsystems, Inc. (collectively, the "Jacobs"), and the Village of Wellington (the "Village") and allege:

JURISDICTION AND VENUE

1. Each cause of action herein concerns real property that is valued in excess of $15,000.00 exclusive of interest, costs and attorneys' fees.

2. Venue properly lies in Palm Beach County, Florida pursuant to Section 47.011, Florida Statutes, because this action concerns a dispute over real property located within Palm



Beach County, Florida and all actions complained of herein have occurred in Palm Beach County, Florida.

PARTIES

3. At all times material, Polo Field One, LLC was and is a Florida limited liability company organized and existing under the laws of the State of Florida, maintaining its principal place of business in Palm Beach County, Florida and conducting business in Palm Beach County, Florida.

4. At all times material, Stadium North, LLC was and is a Florida limited liability company organized and existing under the laws of the State of Florida, maintaining its principal place of business in Palm Beach County, Florida and conducting business in Palm Beach County, Florida.

5. At all times material, Stadium South, LLC was and is a Florida limited liability company organized and existing under the laws of the State of Florida, maintaining its principal place of business in Palm Beach County, Florida and conducting business in Palm Beach County, Florida.

6. At all times material, Far Niente Stables II, LLC was and is a Florida limited liability company organized and existing under the laws of the State of Florida, maintaining its principal place of business in Palm Beach County, Florida and conducting business in Palm Beach County, Florida.

7. At all times material, Equestrian Sport Productions, LLC was and is a Florida limited liability company organized and existing under the laws of the State of Florida, maintaining its principal place of business in Palm Beach County, Florida and conducting business in Palm Beach County, Florida.

ROSENBAUM MOLLENGARDEN PLLC * 250 AUSTRALIAN AVE S * STE 500 * WEST PALM BEACH, FL 33401
(561) 653-2900 * FAX (561) 820-2542

8. Stadium North, LLC, Stadium South, LLC, Polo Field One, LLC and Far Niente Stables II, LLC are owners of a 59.3 acre parcel of land located on the corner of South Shore Boulevard and Pierson Road in the Village of Wellington (the "Subject Property"). Owners were co-applicants for development orders to develop the Subject Property as the "Equestrian Village".

9. Charles Jacobs and Kimberly Jacobs own real property located in Palm Beach County, Village of Wellington, have challenged development orders pertaining to the Equestrian Village project, and have sought administrative interpretations pertaining to the Subject Property under the Village's Unified Land Development Code, and are *sui juris*.

10. At all material times, Solar Sportsystems, Inc. was and is a New York corporation that owns real property in Palm Beach County, Village of Wellington, has challenged development orders pertaining to the Equestrian Village project, and has sought administrative interpretations pertaining to the Subject Property under the Village's Unified Land Development Code.

11. The Village is a municipal corporation of the State of Florida, located in Palm Beach County, Florida.

GENERAL ALLEGATIONS

12. On December 6, 2013, Charles Jacobs, Kimberly Jacobs, and Solar Sportsystems, Inc. submitted four Planning and Zoning Interpretation Requests (collectively the "Interpretation Requests") to the Village pursuant to section 1.12.1 of the Village's Land Development Regulations (the "Code"). The Interpretation Requests purport to seek an interpretation of how certain Code provisions apply to and affect the Subject Property and the structures upon it. *See* Interpretation Requests attached as ***Composite Exhibit "A"***.

13. Section 1.12.1.B of the Code enables certain persons or entities to request the Village issue an interpretation of how specific Code provisions apply to and affect property:

> **Initiation.** An interpretation may be requested by any landowner 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 procedures of this Code.

§ 1.12.1.B. *See* § 1.12.1 attached hereto as ***Exhibit "B"***.

14. Section 1.12.1.C of the Code outlines the procedures the Village must utilize when an interpretation is requested pursuant to section 1.12.1.B. Section 1.12.1.C states the following:

> C. **Procedures:**
> 1. Submission of request for interpretation. Before an interpretation shall be provided by the appropriate Village official, a Request for Interpretation shall be submitted to the appropriate Village official in a form established by that Village official and made available to the public. The request shall be accompanied by a fee established by the Village Council from time to time for the filing and processing of the Request for Interpretation. The fee shall be non-refundable.
> 2. Determination of sufficiency. Within five (5) working days after a Request for Interpretation has been submitted, the Village official responsible for rendering the interpretation shall determine whether it is sufficient.
>
> a. Determined not sufficient. If the Village official determines that the request is not sufficient, a written notice shall be served on the applicant specifying the deficiencies. The Village official shall take no further action on the Request for Interpretation until the deficiencies are remedied. If the applicant fails to correct the deficiencies within ten (10) working days, the Request for Interpretation shall be considered withdrawn.
>
> b.Determined sufficient. When the Request for Interpretation is determined sufficient, the Village official shall review and render an interpretation pursuant to the procedures and standards of this article.
>
> 3. Rendering of interpretation. Within fifteen (15) working days after the Request for Interpretation has been determined sufficient, the Village official responsible for rendering the interpretation shall review and evaluate the request in light of the Comprehensive Plan, this Code, and the Future Land Use Map, whichever is applicable, consult with the Village Attorney, and then render an interpretation.

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15. The Village issued a written interpretation in response to the Jacobs' Interpretation Requests ("Village Interpretation") pursuant to section 1.12.1.C., a copy of which is attached hereto as ***Exhibit "C"***.

16. The Jacobs have appealed the Village's Interpretation pursuant to section 1.12.1.E Section 1.12.1.E states the following:

> E. **Appeal:**
> 1. Initiation. Twenty (20) working days after issuance of a written interpretation by the appropriate Village official responsible for rendering the interpretation, the applicant may appeal the decision to the Board responsible for appeal, as provided in this Code.
> 2. Public hearing. The Board responsible for the appeal shall hold a hearing on the appeal within forty (40) working days of the appeal.
> 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 appeal is currently scheduled to be heard on June 30, 2014 by Wellington's Planning Zoning and Adjustment Board ("PZAB").

17. An appeal heard by PZAB is a quasi-judicial hearing. Accordingly, any interested party in the PZAB proceeding has a right to appeal the PZAB determination to the circuit court by a first tier petition for writ of certiorari. A second tier certiorari review is also available after the first tier certiorari review is complete.

18. The Village has also taken the position that the Village's Interpretation will be binding on the Village. Consequently, the Villages Interpretation will also be binding on the Owners vis-a-vis the Village, because it will be applied to their property by the Village.

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19. All conditions precedent to the commencement of this action have occurred, have been performed, have been excused or have been waived.

COUNT I – Declaratory and Supplemental Relief Against Defendants
(Improper Issuance of Administrative Interpretation)

20. This is an action for declaratory and supplemental relief pursuant to Chapter 86, Florida Statutes.

21. Owners reallege paragraphs 1 through 19 as if fully set forth herein.

22. The Village has accepted the Jacobs' reading of section 1.12.1.B to allow requesting parties to obtain interpretations of how Code provisions affect property in which they have no ownership or contractual interest, which is not consistent with the plain meaning and intent of the ordinance.

23. Section 1.12.1 contains no procedural safeguards or even notice to the property owner of pending "interpretation" requests made by third parties. Consequently, Section 1.12.1 as interpreted and applied by the Village, forces the Village to improperly commence proceedings that have the effect of determining the development rights of non-parties to the requested interpretation, without notice to the non-parties, thereby violating the procedural due process rights of property owners.

24. The correct interpretation of section 1.12.1.B, and the interpretation that negates the procedural due process defect in the ordinance, is that the ability to initiate an administrative interpretation is limited to persons or entities that own or have a contractual interest to own the specific property for which the administrative interpretation is sought. This is the only reading of the ordinance that complies with procedural due process because the owner of the property would have knowledge of and be a part of the process. In fact, other provisions of the Code

relating to initiation of applications for development orders or entitlements under the Code limit the ability to "initiate" them to "the owner, or any other person having a written contractual interest in the land" or their "authorized agent". *See* §§§§ 5.4.3; 5.5.4; 5.8.3; 5.11.

25. Further, it is an absurd result to allow a person or entity with no ownership or contractual interest in a specific property to obtain decisions binding on the Village affecting the development rights or entitlements connected to that property under section 1.12.1. An interpretation authorizing this to occur would logically result in a flood of "interpretation requests" from third-parties, who seek to limit the development entitlements associated with properties of others and collaterally estop development. This is particularly true because section 1.12.1.C. according to the Jacobs, requires the Village to issue an interpretation request pursuant to 1.12.1. if a request complies with the submission requirements outlined in section 1.12.1.C.1.

26. A process which allows third-parties to collaterally estop a landowner from developing his property by obtaining interpretations adverse to the landowner's interest before the landowner even submits a request to develop his land is contrary to the ordinary land development process and demonstrates that the Village and the Jacobs' interpretation of section 1.12.1.B is improper.

27. Further, section 1.12.1 grants third-parties an opportunity to challenge the Village's interpretation of how Code provisions relate to a landowner's property multiple times, through various appellate mechanisms. Thus, a third-party could wrongfully collaterally estop a landowner from developing his property for extremely long periods of time.

28. All parties have a *bona fide* adverse interest with regard to the Village allowing the Jacobs to use section 1.12.1 for interpretations and appeals pertaining to the Subject Property.

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29. Owners are in doubt and have insecurity about their rights under section 1.12.1 due to the actions taken by the Village, including but not limited to the issuance of 1.12.1 administrative interpretations to the Jacobs; the validity and effect of the Village's Interpretation; and the validity and effect of all other decisions rendered as a result of the Jacobs' section 1.12.1 Interpretation Requests concerning the Subject Property, including any decisions that may be made by PZAB at the Jacobs' appeal scheduled to be heard on June 30, 2014, and any subsequent appeals.

30. Owners seek a judicial determination of their rights with regard to the matters set forth herein and any supplemental relief to which they are entitled following the Court's determinations.

31. Owners have a *bona fide*, actual, present practical need for these declarations because the Village has been and continues to allow the Jacobs to improperly use section 1.12.1 in the manner set forth herein, which has the effect of limiting and determining development entitlements associated with the Subject Property.

32. The parties are all before the Court by proper process and the relief sought is not merely the giving of legal advice by the Court or the answer to questions propounded from curiosity.

33. All conditions precedent have been met and there are no administrative remedies available before the Village to prevent the Village from issuing administrative interpretations to individuals or entities for property that they do not have an ownership or contractual interest in.

WHEREFORE, Owners respectfully request a judicial declaration of their rights with regard to the matters set forth herein, including but not limited to a declaration that section 1.12.1 may only be utilized by persons who own or have a contractual interest in ownership in the

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specific property that an administrative interpretation will affect; and a declaration that the Village's Interpretation to the Jacobs pursuant to section 1.12.1 is invalid, void and unenforceable. Owners also request supplemental relief pursuant to Chapter 86, Florida Statutes, including but not limited to injunctive relief to enforce the Court's declaration of rights, and any other relief the Court deems just, proper and equitable, and costs of the action.

COUNT II – Declaratory and Supplemental Relief Against Defendants
(Improper Use of Section 1.12.1 of the Code to Challenge Village Decisions)

34. This is an action for declaratory and supplemental relief pursuant to Chapter 86, Florida Statutes.

35. Owners reallege paragraphs 1 through 19 as if fully set forth herein.

36. The correct interpretation of section 1.12.1's scope is that the ability to initiate an administrative interpretation is limited to persons or entities that own or have a contractual interest to own the specific property for which the administrative interpretation is sought. For example, a situation in which a contract purchaser will not buy someone's property unless there is sufficient lot coverage to build the structure that he wants to build on the property. Other provisions of the Village's Code relating to initiation of applications for development permits or entitlements under the Code limit the ability to "initiate" them to "the owner, or any other person having a written contractual interest in the land" or their "authorized agent". *See* §§§§ 5.4.3; 5.5.4; 5.8.3; 5.11. The other initiation provisions in the Village's Code to obtain decisions regarding development are properly limited to the aforementioned individuals. It is an absurd result to allow a person or entity with no property or contractual interest in a specific property to obtain decisions binding on the Village affecting the development rights or entitlements connected to that property under section 1.12.1.

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37. The "Interpretation Requests" submitted by the Jacobs do not request an interpretation of how Code provisions apply to their own property or how they apply to property in which the Jacobs have a contractual interest, but instead seek to *challenge* the Village's application and interpretation of specific Code provisions which resulted in the Village's permitting and approval of barns, a covered arena, and a viewing deck/seating area (the "existing structures") located upon the Subject Property.

38. Specifically the Interpretation Requests **challenge** the existing structures as follows:

i. Request 1 alleges that the stables built on the Subject Property are structures with floor area to which an alleged 20,000 square foot limitation in section 6.10.11(d) of the Code applies; and that the stables exceed this limitation.

ii. Request 2 alleges that the viewing deck/seating area built on the Subject Property is a structure with floor area to which the alleged 20,000 square foot limitation in section 6.10.11(d) of the Code applies; and that the viewing deck/seating area exceeds this limitation.

iii. Request 3 alleges that an alleged 25 foot height limitation in section 6.5.8.C.2 of the Code applies to the Subject Property and that the covered arena exceeds this height limitation.

iv. Request 4 alleges that the covered arena built on the Subject Property is a structure with floor area to which an alleged 20,000 square foot limitation in section 6.10.11(d) of the Code applies; and that the covered arena exceeds this limitation.

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39. Notably, the Jacobs have formally participated in the permitting and review process which resulted in the Village's approval of the Equestrian Village project and its existing facilities since the development order process was commenced in 2011. In fact, the Jacobs attended all development order hearings and related proceedings as "interested parties" in Wellington before staff and the Village Council in multiple and extensive quasi-judicial hearings.

40. The most recent approvals of the Equestrian Village project issued by the Village in 2013 were not appealed by the Jacobs although they fully participated in Village proceedings including quasi-judicial hearings and had the opportunity to file petitions for writ of certiorari.

41. Section 1.12.1.B is not the proper procedure for the Jacobs to challenge the Village's previous issuance of development orders because there are other provisions of the Code and/or Florida law that are required by law to be used for such challenges.

42. Section 1.12.1 is merely a method by which a party may seek an *interpretation* as to how a provision of the Code applies to one's own property or property in which he has a contractual interest to purchase. The Jacobs' Interpretation Requests are not truly interpretation requests at all. Instead they are improper challenges to previously granted development approvals which must be appealed by petition for writ of certiorari.

43. The Village has acquiesced to the Jacobs' misuse of Section 1.12.1 by providing them with the Village's Interpretation relating to the propriety of the existing structures on the Subject Property, which were previously determined to be permissible by the Village, and by setting the Jacobs' appeal of the Village's Interpretation for hearing before the PZAB.

44. Owners, the Jacobs and the Village have a *bona fide* adverse interest with regard to the propriety of using section 1.12.1. by the Jacobs to challenge prior Village decisions.

45. Owners seek a judicial determination of their rights concerning the matters set forth herein, pertaining to the Subject Property including, but not limited to whether the Jacobs may properly challenge Village decisions pertaining to the Subject Property by requests for administrative interpretations pursuant to section 1.12.1; and the validity and effect of all decisions rendered as a result of the Jacobs' section 1.12.1 Interpretation Requests, including any decisions made by PZAB at the appeal scheduled to be heard on June 30, 2014.

46. Owners have a *bona fide*, actual, present practical need for these declarations because the Village has been and continues to allow the Jacobs to improperly use section 1.12.1 to challenge previously issued Village decisions relating to the Subject Property.

47. The parties are all before the Court by proper process and the relief sought is not merely the giving of legal advice by the Court or the answer to questions propounded from curiosity.

48. All conditions precedent have been met and there are no administrative remedies available before the Village to prevent the Village from issuing administrative interpretations to individuals or entities for property that they do not have an ownership or contractual interest in.

WHEREFORE, Owners seek a judicial declaration of their rights with regard to the matters set forth herein, including but not limited to a declaration that the Jacobs may not use section 1.12.1 to challenge decisions made by the Village pertaining to the Subject Property; and that any and all decisions rendered as a result of the Jacobs' section 1.12.1 Interpretation Requests, including any decisions that may be made by PZAB at the appeal scheduled to be heard on June 30, 2014, are invalid, void and unenforceable. Owners also request supplemental relief pursuant to Chapter 86, Florida Statutes, including but not limited to injunctive relief, and any other relief the Court deems just, proper, and equitable, and costs of the action.

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COUNT III– Declaratory and Supplemental Relief Against All Parties
(Substantive Due Process Violation)

49. This is an action for declaratory and supplemental relief pursuant to Chapter 86, Florida Statutes.

50. Owners reallege paragraphs 1 through 19 as if fully set forth herein.

51. The Fourteenth Amendment to the United States Constitution provides that all citizens are entitled to substantive due process from state government. Article I, Section 9 of the Florida Constitution similarly provides that no person shall be deprived of life, liberty, or property without due process of the law.

52. Due Process rights under the United States and Florida Constitution include a substantive component that bars certain arbitrary, wrongful government actions regardless of the fairness of the procedures used to implement them.

53. In particular, as a local government, the Village's exercise of its police powers to enact laws must comply with the substantive due process rights of individuals and entities.

54. Owners are entitled to rely on their substantive due process rights to protect them from arbitrary and capricious legislation by the Village.

55. Owners have state granted land-use rights (i.e. their development entitlements) associated with the Subject Property, which are being infringed upon by a legislative act of the Village. In particular, the Village's enactment and application of section 1.12.1 of the Code.

56. Section 1.12.1.B states the following:

> **Initiation.** An interpretation may be requested by any landowner 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 procedures of this Code.

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57. Section 1.12.1 as interpreted by the Village, allows persons or entities to obtain determinations of how the Village's Code provisions affect specific properties in which the requesting parties have no ownership or contractual interest. Moreover, section 1.12.1 grants the requesting party an opportunity to appeal the Village's interpretation to PZAB. Because a hearing before PZAB is quasi-judicial any interested party in the PZAB proceeding has a right to appeal the decision made by PZAB to the circuit court through a first tier petition for writ of certiorari and then appeal the circuit court's determination to the district court through second tier certiorari review.

58. The Village has in fact, allowed persons and entities, including the Jacobs to utilize section 1.12.1 in order to obtain determinations of how Code provisions affect property which they do not own or have a contractual interest.

59. Allowing persons or entities to initiate and obtain binding opinions from the Village, and the courts, deciding the development entitlements associated with property in which they have no ownership or contractual interest, does not have a conceivable relationship to public health, safety, morals or general welfare. Consequently, section 1.12.1 is arbitrary, capricious, and does not advance or lead to a legitimate state interest, in violation of Article I, Section 9, Fla. Const. and the substantive component of the Due Process Clause of the United States Constitution.

60. Owners, the Jacobs and the Village have a *bona fide* adverse interest with regard to the constitutionality of section 1.12.1.

61. Owners seek a judicial determination of their rights concerning the matters set forth herein, pertaining to section 1.12.1, including but not limited to whether section 1.12.1 is arbitrary, capricious and violative of the Florida and Federal Constitutions; and the validity and

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effect of all decisions rendered as a result of the Jacobs' section 1.12.1 Interpretation Requests, including any decisions made by PZAB at the appeal scheduled to be heard on June 30, 2014.

62. Owners have a *bona fide*, actual, present practical need for these declarations because the Village has been and continues to allow the Jacobs to utilize section 1.12.1 to obtain opinions relating to the development entitlements attached to the Subject Property.

63. The parties are all before the Court by proper process and the relief sought is not merely the giving of legal advice by the Court or the answer to questions propounded from curiosity.

64. All conditions precedent have been met and there are no administrative remedies available before the Village to prevent the Village from issuing administrative interpretations to individuals or entities for property that they do not have an ownership or contractual interest in.

WHEREFORE, Owners respectfully request a judicial declaration of their rights with regard to the matters set forth herein, including but not limited to a declaration that section 1.12.1 of the Code is unconstitutional, invalid, unlawful and void; and a declaration that any decision issued by the Village to the Jacobs pursuant to section 1.12.1 is void and unenforceable. Owners also request supplemental relief pursuant to Chapter 86, Florida Statutes, including but not limited to injunctive relief to enforce the Court's declaration of rights, and any other relief the Court deems just, proper and equitable, and costs of the action.

COUNT IV–Injunctive Relief Against All Parties
(Substantive Due Process Violation)

65. This is an action for temporary, preliminary and permanent injunction pursuant to Florida Rule of Civil Procedure 1.610 and the Florida common law.

66. Owners reallege paragraphs 1 through 19 as if fully set forth herein.

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67. The State Due Process Clause, Article I, § 9 of Florida's Constitution and the substantive component of the Due Process Clause of the Fourteenth Amendment to the United States Constitution requires the Village to refrain from imposing and enforcing arbitrary and irrational legislation upon the Owners.

68. The Village has arbitrarily and irrationally interfered with the Owners' state granted property rights by enacting and implementing Section 1.12.1, to allow persons or entities to obtain determinations of how the Village's Code provisions affect specific properties in which they have no ownership or contractual interest. Specifically, the Village has allowed persons and entities, including the Jacobs to utilize section 1.12.1., to obtain a determination of the Subject Property's development entitlements. Moreover, section 1.12.1 grants the requesting party an opportunity to appeal the Village's interpretation to PZAB. Because a hearing before PZAB is quasi-judicial any interested party in the PZAB proceeding has a right to appeal the decision made by PZAB to the circuit court through a first tier petition for writ of certiorari and then appeal the circuit court's determination to the district court through second tier certiorari review.

69. Allowing persons or entities to initiate and obtain binding opinions from the Village, and the courts, deciding the development entitlements associated with property in which they have no ownership or contractual interest, does not have a conceivable relationship to public health, safety, morals or general welfare. Consequently, section 1.12.1 is arbitrary, capricious, and does not advance or lead to a legitimate state interest, in violation of Article I, Section 9, Fla. Const. and the substantive component of the Due Process Clause of the United States Constitution.

70. The Village has and is continuing to wrongfully interfere with Owners' right to be free of arbitrary and capricious legislation and violate both the Federal and Florida Constitutions

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because it has issued interpretations in response to the Jacobs' 1.12.1 Interpretation Requests, has scheduled a PZAB appeal hearing pursuant to section 1.12.1, and has created additional appellate remedies for interested parties pursuant to section 1.12.1, an arbitrary and capricious ordinance. The issuance of the interpretations, the scheduling of the PZAB hearing, and the creation of appellate remedies for interested parties all have the effect of limiting and changing the development entitlements associated with the Owners' property pursuant to an arbitrary, capricious and unconstitutional ordinance.

71. To preserve the status quo and to protect the Owners' property rights, the Village must be restrained and enjoined from pursuing any actions under section 1.12.1 which have the effect of potentially depriving the Owners of their development rights.

72. Owners have no adequate remedy at law because the Village is unconstitutionally depriving them of their rights pursuant to an ordinance which is violative of substantive due process.

73. The Subject Property is unique under the law, thus the infringement upon Owners rights cannot be cured by monetary damages.

74. Owners have a substantial likelihood of success on the merits since the Village violated Owners' constitutional due process rights by enacting and utilizing an arbitrary and capricious ordinance to deprive Owners of their state granted development rights. Further, Owners have a clear legal right to substantive due process.

75. The public interest will be served if the Village is required to comply with Florida and Federal law and if the Court acts to protect the interests of the Village's residents, including Owners, from unlawful interference with their property rights.

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76. All conditions precedent have been met and there are no administrative remedies available before the Village to prevent the Village from issuing administrative interpretations to individuals or entities for property that they do not have an ownership or contractual interest in.

WHEREFORE, Plaintiffs respectfully request that the Court grant the following relief: (1) Enter a temporary, preliminary and permanent injunction, preventing the Village from utilizing section 1.12.1; (2) enter a temporary, preliminary and permanent injunction, preventing the Village from holding the appeal of its administrative interpretation scheduled for June 30, 2014 or such other time that it may be rescheduled; (3) enter a temporary, preliminary and permanent injunction, preventing the Village from utilizing section 1.12.1. to unlawfully interfere with Owners' property interest in development rights; (4) enter a temporary, preliminary and permanent injunction, preventing the Village from utilizing any interpretation issued pursuant to section 1.12.1; and (5) enter an order granting any other relief which the Court deems just, proper and equitable, with costs of the action.

COUNT V– Declaratory and Supplemental Relief Against All Parties
(Vested Rights - Estoppel)

77. This is an alternative cause of action for declaratory and supplemental relief pursuant to Chapter 86, Florida Statutes.

78. Owners reallege paragraphs 1 through 19 as if fully set forth herein.

79. Between 2011 and 2013, Owners applied for and obtained various development orders (the "Development Orders") to build the Equestrian Village project.

80. The Development Orders were issued by the Village pursuant to its permitting and review process, which included an assessment of the gross floor area and height of the structures to be constructed upon the Subject Property and their compliance with the Code.

81. Owners were and are entitled to rely upon the Village's interpretation of its Code provisions and the Village's issuance of the Development Orders

82. In good faith reliance on the Village's approvals and issuance of the Development Orders, Owners constructed various structures upon the Subject Property which constitute a substantial change to the Subject Property. The structures were built in order to create an equestrian facility where equestrians train and show their horses. The structures comprising the Equestrian Village project include but are not limited to, barns, a covered arena, riding rings, restrooms, offices, manure bins, a viewing deck/seating area, and horse wash racks. Owners incurred extensive obligations obtaining the Development Orders and constructing the Equestrian Village project.

83. Subsequent to the issuance of the Development Orders. the Jacobs submitted their Interpretation Requests pursuant to section 1.12.1 of the Code.

84. Section 1.12.1 states the following in pertinent part:

> **Initiation.** An interpretation may be requested by any landowner 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 procedures of this Code.

85. The Jacobs' Interpretation Requests challenge the existing structures as follows:

i. Request 1 alleges that the stables built on the Subject Property are structures with floor area to which an alleged 20,000 square foot limitation in section 6.10.11(d) of the Code applies; and that the stables exceed this limitation.

ii. Request 2 alleges that the viewing deck/seating area built on the Subject Property is a structure with floor area to which the alleged 20,000 square

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foot limitation in section 6.10.11(d) of the Code applies; and that the viewing deck/seating area exceeds this limitation.

iii. Request 3 alleges that an alleged 25 foot height limitation in section 6.5.8.C.2 of the Code applies to the Subject Property and that the covered arena exceeds this height limitation.

iv. Request 4 alleges that the covered arena built on the Subject Property is a structure with floor area to which an alleged 20,000 square foot limitation in section 6.10.11(d) of the Code applies; and that the covered arena exceeds this limitation.

86. If the Jacobs are successful in their challenges raised in the Interpretation Requests and appeals, Owners are at risk of losing their right to maintain the Development Orders.

87. Owners have vested rights to the Development Orders because Owners have constructed the Equestrian Village project and substantially altered the Subject Property and have incurred extensive obligations as a result of the Development Orders.

88. The Village is estopped from commencing subsequent Village proceedings, initiated by private citizens pursuant to Section 1.12.1, because the proceeding essentially divests Owners' vested rights by making them contingent on the outcome of the various proceedings that become available under section 1.12.1.

89. Owners and the Village have a *bona fide* adverse interest with regard to whether the Village may allow the Jacobs to utilize section to 1.12.1 to impinge upon and challenge Owners' vested rights to the Development Orders; and whether the Village is estopped from

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commencing an *ex post facto* proceeding which can divest Owners of their vested rights to the Development Orders.

90. Owners are in doubt and have insecurity regarding the lawfulness of the Jacobs' Interpretation Requests, which seek to divest Owners of their vested rights to the Development Orders, when the facts establish that the Village is estopped from allowing such a proceeding to occur.

91. Owners seek a judicial determination of their rights with regard to the matters set forth herein, including, but not limited to: (1) whether Owners have a vested right to the Development Orders; and (2) whether the Village, due to its actions, is equitably estopped from commencing any proceeding, including but not limited to interpretation requests and appeals from interpretation requests pursuant to Section 1.12.1, which have the effect of divesting Owners' vested rights.

92. Owners have an actual, present practical need for these declarations because the Village has been and continues to allow the Jacobs to utilize section 1.12.1 to "divest" Owners' rights under the Development Orders.

93. The antagonistic and adverse interests between Owners and the Village are all before the court and the relief sought is not merely the giving of legal advice by the Court or the answer to questions propounded from curiosity.

94. All conditions precedent have been met and there are no administrative remedies available before the Village to prevent the Village from issuing administrative interpretations to individuals or entities pursuant to section 1.12.1 that divest Owners of their vested rights.

WHEREFORE, Plaintiffs respectfully request a judicial declaration of their rights with regard to the matters set forth herein, including but not limited to a declaration that: (1) Owners

have a vested right to the Development Orders; and (2) that the Village, due to its actions, is equitably estopped from commencing any proceeding, including interpretation requests and appeals from interpretation requests, which have the effect of divesting Owners' vested rights. Owners also request supplemental relief pursuant to Chapter 86, Florida Statutes, including but not limited to injunctive relief to enforce the Court's declaration of rights, and any other relief the Court deems just, proper and equitable, and costs of the action.

COUNT VI–Injunctive Relief Against All Parties
(Vested Rights - Estoppel)

95. This is an alternative cause of action for temporary, preliminary and permanent injunctive relief pursuant to Florida Rule of Civil Procedure 1.610 and the Florida common law, which is within the subject matter jurisdiction of the Court.

96. Owners reallege paragraphs 1 through 19 as if fully set forth herein.

97. Between 2011 and 2013, Owners applied for and obtained various development orders (the "Development Orders") to build the Equestrian Village project.

98. The Development Orders were issued by the Village pursuant to its permitting and review process, which included an assessment of the gross floor area and height of the structures to be constructed upon the Subject Property and their compliance with the Code.

99. Owners were and are entitled to rely upon the Village's interpretation of its Code provisions and the Village's issuance of the Development Orders, which were never appealed and are final.

100. In good faith reliance on the Village's approvals and issuance of the Development Orders, the Owners constructed various structures upon the Subject Property which constitute a substantial change to the Subject Property. The structures were built to create an equestrian

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facility where equestrians train and show their horses. The structures comprising the Equestrian Village project include barns, a covered arena, riding rings, restrooms, offices, manure bins, a viewing deck/seating area, and horse wash racks. Owners incurred extensive obligations obtaining the Development Orders and constructing the Equestrian Village project.

101. Subsequent to the issuance of the Development Orders the Jacobs submitted their Interpretation Requests pursuant to section 1.12.1 of the Code.

102. Section 1.12.1 states the following in pertinent part:

> **Initiation.** An interpretation may be requested by any landowner 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 procedures of this Code.

103. The Jacobs' Interpretation Requests challenge the existing structures as follows:

i. Request 1 alleges that the stables built on the Subject Property are structures with floor area to which an alleged 20,000 square foot limitation in section 6.10.11(d) of the Code applies; and that the stables exceed this limitation.

ii. Request 2 alleges that the viewing deck/seating area built on the Subject Property is a structure with floor area to which the alleged 20,000 square foot limitation in section 6.10.11(d) of the Code applies; and that the viewing deck/seating area exceeds this limitation.

iii. Request 3 alleges that an alleged 25 foot height limitation in section 6.5.8.C.2 of the Code applies to the Subject Property and that the covered arena exceeds this height limitation.

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iv. Request 4 alleges that the covered arena built on the Subject Property is a structure with floor area to which an alleged 20,000 square foot limitation in section 6.10.11(d) of the Code applies; and that the covered arena exceeds this limitation.

104. If the Jacobs are successful in their challenges raised in the Interpretation Requests and appeals, Owners are at risk of losing their right to maintain the Development Orders.

105. Owners have vested rights to the Development Orders because Owners have constructed the Equestrian Village project and substantially altered the Subject Property and have incurred extensive obligations as a result of the Development Orders.

106. The Village is estopped from commencing subsequent Village proceedings, initiated by private citizens pursuant to Section 1.12.1, because the proceeding essentially divests Owners' vested rights by making them contingent on the outcome of the various proceedings that become available under section 1.12.1.

107. The Village's conduct set forth above has created and continues to create irreparable harm for which there is no adequate remedy at law because the Village is depriving Owners of their lawfully vested rights in the Development Orders, which are associated with the Subject Property, which is unique under the law, and thus impingement of rights associated with it cannot be cured by money damages.

108. The Village's actions have infringed upon Owners' vested property rights to the Development Orders because the Village is allowing third parties to challenge them *ex post facto*.

109. Owners have a substantial likelihood of success on the ultimate merits, because the Village is equitably estopped from revoking Owners vested rights to the Development Orders.

110. To preserve the status quo and to protect the Owners' property rights, the Village must be restrained and enjoined from pursuing any actions which have the effect of divesting the Owners' vested rights pursuant to section 1.12.1.

111. Further, the public interest will be served if the Village is enjoined from allowing third parties to commence proceedings which have the effect of divesting previously vested rights to development orders because it protects citizens from unlawful and improper interference with their vested property rights.

112. All conditions precedent have been met and there are no administrative remedies available before the Village to prevent the Village from issuing administrative interpretations to individuals or entities pursuant to section 1.12.1 that divest Owners of their vested rights.

WHEREFORE, Plaintiffs respectfully request that the Court enter a temporary, preliminary and permanent injunction, preventing the Village from commencing or allowing third-parties, including the Jacobs, to commence any proceeding, including interpretation requests and appeals from interpretation requests, which have the effect of divesting Owners' vested rights in the Development Orders, and any other relief which the Court deems just, proper and equitable, with costs of the action.

(Signature and Certificate of Service follow)

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(561) 653-2900 * FAX (561) 820-2542

Respectfully submitted,

ROSENBAUM MOLLENGARDEN PLLC
Counsel for Plaintiffs
250 Australian Avenue South, 5th Floor
West Palm Beach, Florida 33401
Phone: (561) 653-2900 / Fax: (561) 820-2542
Primary: Jacobs003331-Filings@r-mlaw.com
Secondary: litigation-filings@r-mlaw.com
Secondary: enardo@r-mlaw.com

By: _____
DANIEL S. ROSENBAUM
Florida Bar No. 306037
TATIANA B. YAQUES
Florida Bar No. 0673048
ELIZABETH L. HERTZ
Florida Bar No. 91145

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via ***Electronic Mail*** to the attached service list this 22 day of April, 2014.

ROSENBAUM MOLLENGARDEN PLLC
Counsel for Plaintiffs
250 Australian Avenue South, Suite 500
West Palm Beach, Florida 33401
Tel. (561) 653-2900 / Fax (561) 820-2542
Primary: Jacobs003331-Filings@r-mlaw.com
Secondary: litigation-filings@r-mlaw.com
Secondary: enardo@r-mlaw.com

By: _____
DANIEL S. ROSENBAUM
Florida Bar No. 306037
TATIANA B. YAQUES
Florida Bar No. 0673048
ELIZABETH L. HERTZ
Florida Bar No.: 91058

(*Service List follows*)

Service List:

Claudio Riedi, Esquire
Lehtinen Schultz Riedi Catalano de la Fuente PLLC
Sabadell Financial Center
1111 Brickell Avenue, Suite 2200
Miami, FL 33131
criedi@lsrcf.com

John K. Shubin, Esquire
Jeff S. Bass, Esquire
Shubin & Bass, P.A.
46 S.W. First Street, Third Floor
Miami, FL 33130
Jshubin@shubinbass.com
jbass@shubinbass.com

23M4444

Via Electronic Mail

December 6, 2013

Laurie Stillwell Cohen, Esq.
Village Attorney
Village of Wellington
12300 Forest Hill Boulevard
Wellington, FL 33414

Re: Administrative Appeals

Dear Laurie:

This correspondence is transmitted to you in response to you November 7th letter regarding the four (4) administrative appeals that have been pending before the Village of Wellington for almost two years. These appeals were properly and timely filed with the Village Clerk and Village Attorney and were accepted by the Village. At no time during this time has the Village advised that the appeals were not timely or appropriately filed, or that a form needed to be filed to perfect their status, even though we specifically asked at the time of filing if any forms or fees were needed. A copy of the appeals are attached to this correspondence.

The interpretations that were appealed were already provided and the Village has stood by those interpretations for the last two years during the permitting and approval process of Equestrian Village. At the October 22, 2013 hearing, I raised the fact that the Village (the Developer) was again relying on the exact interpretations that had been appealed and that no final decision had been provided as to the propriety of the Village's position because the Village had failed to set them for hearing.

Your correspondence contemplates a process when an interpretation has not been provided. This is not the case under the current circumstances. The Village has repeatedly provided its interpretation in numerous public forums, and accordingly, that is the interpretation that has been appealed, and that is the process



that we were advised by the prior Village Attorney and Staff to follow. The process you are requesting us to follow is only available when an interpretation has not been given.

Nonetheless, you have specifically advised that you are in no way challenging our right to the appeals that we have filed or trying to prohibit our appellate rights from moving forward. You have further advised that the Village will not change the previous determinations that it has rendered on numerous occasions. Accordingly, while preserving our arguments, and without waiving our right to challenge the requirement to file under these circumstances (through the filing of an action for declaratory relief), I am filing the attached forms under protests and request that this matter be immediately addressed so that we can move forward in this process.

I am also forwarding a check in the amount of $2000.00 to process these appeals.

Thank you for your anticipated attention to this matter.

Sincerely,

Amy E. Huber
For the firm

Enc.

cc: Claudio Riedi, Esq.
Mr. Paul Schofield
Mr. Tim Stillings

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12300 Forest Hill Blvd . Wellington, FL 33414 (561) 791-4000 pzapplications@wellingtonfl gov

PLANNING & ZONING INTERPRETATION REQUEST

I. PETITIONER OR AGENT INFORMATION

Petitioner(s) if other than owner(s). Charles and Kimberly Jacobs & Solar Sportsystems

Address: see attached City: _____ ST _____ Zip _____

Phone: _____ FAX _____

Agent:* Shubin & Bass, P.A. John Shubin, Jeff Bass, Amy Hub

Company Name: _____

Address: 46 SW 1st St. 3rd Fl City: Miami ST FL Zip: 33136

Phone: 305·381·6060 FAX: 305·381·9457

*All correspondence will be sent to agent unless otherwise requested.

II. INTERPRETATION REQUEST

A. INTERPRETATION REQUEST (State the Code and Section thereof for which the interpretation is requested Be specific with respect to the nature of your interpretation request):

Please see attached.

B. Project Name (if applicable)

Equestrian Village

C. Project Address (if applicable)

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PLANNING & ZONING INTERPRETATION REQUEST

I. PETITIONER OR AGENT INFORMATION

Petitioner(s) if other than owner(s): Charlie & Kim Jacobs / Solar Sportsystems, Inc.
Address: 2730 Polo Island Dr, A-104 / 13307 Polo Club Rd, C-104 & C-105 City: Wellington ST FL Zip: _____

Phone. _____ FAX: _____

Agent: * John Shubin, Jeff Bass, and Amy Huber
Company Name: Shubin & Bass, P.A.
Address: 46 SW 1st St, 3rd Floor City: Miami ST FL Zip 33130
Phone. 305.381.6060 FAX: 305.381.9457

*All correspondence will be sent to agent unless otherwise requested.

II. INTERPRETATION REQUEST

A. INTERPRETATION REQUEST (State the Code and Section thereof for which the interpretation is requested. Be specific with respect to the nature of your interpretation request).

Article 10, Sec. 6.10.11(d)

The covered commercial equestrian arena is 80,400 sq. ft. This is in excess (4x) of the maximum permitted commercial use permitted in the EOZD pursuant to Article 10, Sec. 6.10.11(d).

See attached appeal dated January 30, 2012.

B. Project Name (If applicable):

Equestrian Village

C. Project Address (if applicable)

LAW OFFICES
SHUBIN & BASS
PROFESSIONAL ASSOCIATION

Via Electronic Mail
and U.S. Mail

January 31, 2012

Ms. Awilda Rodriguez
City Clerk
City of Wellington
12300 Forest Hill Boulevard
Wellington, Florida 33414

Re: Appeal of Administrative Interpretation Re: Equestrian Arena

Dear Ms. Rodriguez:

This appeal is filed on behalf of Charles and Kimberly Jacobs and Solar Sportsystems, Inc. (collectively, the "Appellants"), the owners of real property located in the City of Wellington at 2730 Polo Island Drive, A-104, Wellington, Florida and 13307 Polo Club Road, C-104 and C-105, Wellington, Florida, respectively. The Appellants are aggrieved and adversely affected by an administrative interpretation, rendered by the City, related to the calculation of Floor Area for an Equestrian Arena that is approximately 80,400 square feet in size (the "Subject Interpretation"). (The Equestrian Arena is described in detail in Exhibit A (attached)). The Subject Interpretation is erroneous and must be reversed.

Please consider this correspondence as the Appellants' appeal of the Subject Interpretation and corresponding request for a public hearing regarding same. If there are forms and/or fees associated with this Administrative Appeal, kindly identify them for us at your earliest convenience, and we will remit them forthwith.

I. The Equestrian Arena is a "Structure" with 80,400 square feet of Floor Area

The City's Land Development Regulations, Florida law, and common sense require the reversal of the Subject Interpretation. The City's Code defines "Floor Area" to mean "the ratio of the gross floor area of all structures on a lot to the lot area, excluding vertical core circulation areas for **multi**story structures. "Art. 3, Ch. 2, City Code. (Emphasis supplied). The City's Code defines "Structure" as "that which is three

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(3) feet or more in height, built or constructed or erected or tied down having a fixed location on the ground or attached to something having a permanent location on the ground, such as buildings, homes, mobile homes, towers, walls, fences. billboards, shore protection devices, and poster panels." *Id.*

Legally and grammatically, it is clear that the Equestrian Arena is a "structure" as that term is defined by the City Code and commonly understood. Because the Equestrian Arena is a *single-story* structure – no exception exists for the calculation of its floor area because the only enumerated definitional exception is limited to **multistory** structure which this is not. Under the doctrine of *expressio unius est exclusion alterius*, the Code's express mention of one exclusion directly implies that none other exists. By all measurements and all definitions then, the Equestrian Arena is – under the City's Code – a "structure" comprising 80,400 square feet of Floor Area. The City staff's contrary administrative interpretation is therefore clearly erroneous and must be reversed.

II. The Equestrian Arena is Prohibited by the EOZD District Regulations

The Equestrian Arena is located within the Equestrian Overlay Zoning District ("EOZD"). *See* Exhibit A. The operative district regulations for the EOZD prohibit the development of any commercial structure in excess of 20,000 square feet of gross floor area. *See* Article 10, Sec. 6.10.11(d), City Code. Because the Equestrian Arena exponentially exceeds the ***maximum* permitted** commercial development intensity within the EOZD, it is prohibited therein. As such, it was clear and reversible error for the City's administration to approve its development within the EOZD District.

The Appellants reserve the right to supplement this appeal with additional legal authority and arguments if and when the City responds to their Public Records Act requests.

Sincerely yours,

John K. Shubin, Esq.
Jeffrey S. Bass, Esq.
Amy E. Huber, Esq.
For the firm

cc: Jeff Kurtz, Esq., City Attorney
Mr. David Flinchum, Planning & Zoning Manager

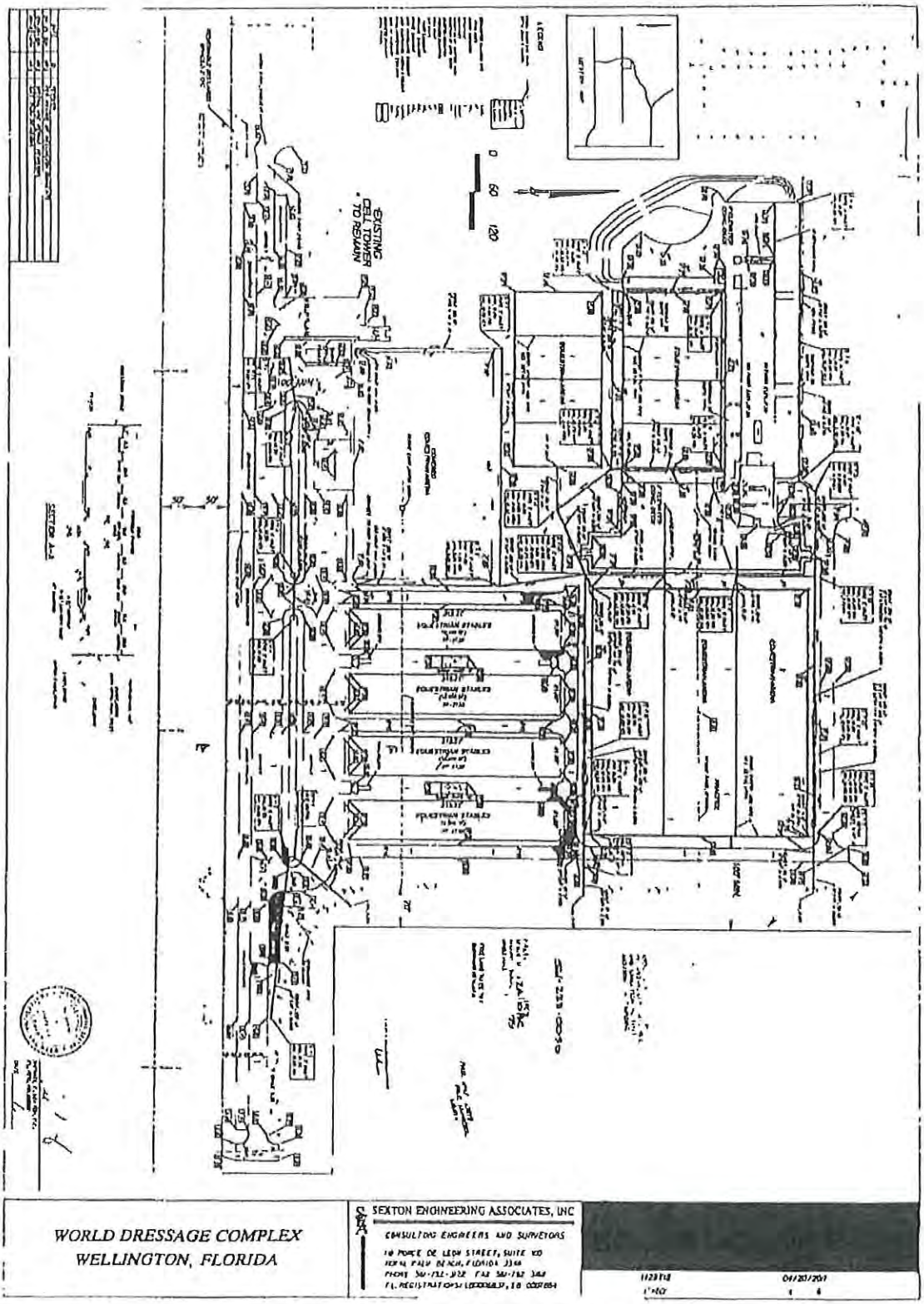

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SEXTON ENGINEERING ASSOCIATES, INC
CONSULTING ENGINEERS AND SURVEYORS

EXHIBIT "A"

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PLANNING & ZONING INTERPRETATION REQUEST

I. PETITIONER OR AGENT INFORMATION

Petitioner(s) if other than owner(s): Charlie & Kim Jacobs / Solar Sportsystems, Inc.,
Address: 2730 Polo Island Dr. A104 / 13307 Polo Club Rd, Unit 105 City: Wellington ST FL Zip: _____

Phone. _____ FAX: _____

Agent: * John Shubin, Jeff Bass, Amy Huber

Company Name. Shubin & Bass, P.A.

Address: 46 SW 1st St, 3rd Fl City: Miami ST FL Zip: 33130

Phone. 305.381.6060 FAX: 305.381.9457

*All correspondence will be sent to agent unless otherwise requested.

II. INTERPRETATION REQUEST

A. INTERPRETATION REQUEST (State the Code and Section thereof for which the interpretation is requested. Be specific with respect to the nature of your interpretation request):

Article 10, Sec. 6.10.11(d)

The commercial arena viewing deck/vender/seating area is in excess of 29000 sq. ft. and exceeds the maximum permitted commercial use allowed in the EOZD pursuant to Article 10, Sec. 6.10.11(d.)

See attached appeal.

B. Project Name (if applicable):

Equestrian Village

C. Project Address (if applicable)

LAW OFFICES
SHUBIN & BASS
PROFESSIONAL ASSOCIATION

Via Electronic Mail
and U.S. Mail

January 31, 2012

Ms. Awilda Rodriguez
City Clerk
City of Wellington
12300 Forest Hill Boulevard
Wellington, Florida 33414

Re: Appeal of Administrative Interpretation Re: Equestrian Arena Seating

Dear Ms. Rodriguez:

This correspondence is filed on behalf of Charles and Kimberly Jacobs and Solar Sportsystems, Inc. (collectively, the "Appellants"), the owners of real property located in the City of Wellington at 2730 Polo Island Drive, A-104, Wellington, Florida and 13307 Polo Club Road, C-104 and C-105, Wellington, Florida, respectively, and is intended to supplement the Appellants' previous appeal filed today and attached hereto as Exhibit "A." The Appellants also appeal the administrative interpretation related to the calculation of Floor Area for the Equestrian Arena Seating as depicted in Exhibit "B."("Seating Interpretation").

Please consider this correspondence as the Appellants' appeal of the Seating Interpretation and corresponding request for a public hearing regarding same. If there are forms and/or fees associated with this Administrative Appeal, kindly identify them for us at your earliest convenience, and we will remit them forthwith.

I. **The Equestrian Arena Seating is a "Structure" with Floor Area**

The City's Land Development Regulations, Florida law, and common sense require the reversal of the Subject Interpretation. The City's Code defines "Floor Area" to mean "the ratio of the gross floor area of all structures on a lot to the lot area, excluding vertical core circulation areas for multistory structures. "Art. 3, Ch. 2, City Code. (Emphasis supplied). The City's Code defines "Structure" as "that which is three (3) feet or more in height, built or constructed or erected or tied down having a fixed location on the ground or attached to something having a permanent location on the ground, such as buildings, homes, mobile homes, towers, walls, fences, billboards, shore protection devices, and poster panels." *Id.*

Legally and grammatically, it is clear that the Equestrian Arena Seating is a "structure" as that term is defined by the City Code and commonly understood. By all measurements and all definitions, the Equestrian Arena Seating is – under the City's Code – a "structure" comprising of square feet of Floor Area. The City staff's contrary administrative interpretation is therefore clearly erroneous and must be reversed.

II. The Equestrian Arena Seating is Prohibited by the EOZD District Regulations

The Equestrian Arena is located within the Equestrian Overlay Zoning District ("EOZD"). *See* Exhibit A. The operative district regulations for the EOZD prohibit the development of any commercial structure in excess of 20,000 square feet of gross floor area. *See* Article 10, Sec. 6.10.11(d), City Code. Because the Equestrian Arena exponentially exceeds the ***maximum*** **permitted** commercial development intensity within the EOZD, it is prohibited therein. As such, it was clear and reversible error for the City's administration to approve its development within the EOZD District.

The Appellants reserve the right to supplement this appeal with additional legal authority and arguments if and when the City responds to their Public Records Act requests.

Sincerely yours,

John K. Shubin, Esq.
Jeffrey S. Bass, Esq.
Amy E. Huber, Esq.
For the firm

cc: Jeff Kurtz, Esq., City Attorney
Mr. David Flinchum, Planning & Zoning Manager.

LAW OFFICES
SHUBIN & BASS
PROFESSIONAL ASSOCIATION

Via Electronic Mail
and U.S. Mail

January 31, 2012

Ms. Awilda Rodriguez
City Clerk
City of Wellington
12300 Forest Hill Boulevard
Wellington, Florida 33414

Re: Appeal of Administrative Interpretation Re: Equestrian Arena

Dear Ms. Rodriguez:

This appeal is filed on behalf of Charles and Kimberly Jacobs and Solar Sportsystems, Inc. (collectively, the "Appellants"), the owners of real property located in the City of Wellington at 2730 Polo Island Drive, A-104, Wellington, Florida and 13307 Polo Club Road, C-104 and C-105, Wellington, Florida, respectively. The Appellants are aggrieved and adversely affected by an administrative interpretation, rendered by the City, related to the calculation of Floor Area for an Equestrian Arena that is approximately 80,400 square feet in size (the "Subject Interpretation"). (The Equestrian Arena is described in detail in Exhibit A (attached)). The Subject Interpretation is erroneous and must be reversed.

Please consider this correspondence as the Appellants' appeal of the Subject Interpretation and corresponding request for a public hearing regarding same. If there are forms and/or fees associated with this Administrative Appeal, kindly identify them for us at your earliest convenience, and we will remit them forthwith.

I. The Equestrian Arena is a "Structure" with 80,400 square feet of Floor Area

The City's Land Development Regulations, Florida law, and common sense require the reversal of the Subject Interpretation. The City's Code defines "Floor Area" to mean "the ratio of the gross floor area of all structures on a lot to the lot area, excluding vertical core circulation areas for multistory structures. "Art. 3, Ch. 2, City Code. (Emphasis supplied). The City's Code defines "Structure" as "that which is three

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EXHIBIT "A"

(3) feet or more in height, built or constructed or erected or tied down having a fixed location on the ground or attached to something having a permanent location on the ground, such as buildings, homes, mobile homes, towers, walls, fences, billboards, shore protection devices, and poster panels." *Id.*

Legally and grammatically, it is clear that the Equestrian Arena is a "structure" as that term is defined by the City Code and commonly understood. Because the Equestrian Arena is a *single-story* structure – no exception exists for the calculation of its floor area because the only enumerated definitional exception is limited to **multi**story structure which this is not. Under the doctrine of *expressio unius est exclusion alterius*, the Code's express mention of one exclusion directly implies that none other exists. By all measurements and all definitions then, the Equestrian Arena is – under the City's Code – a "structure" comprising 80,400 square feet of Floor Area. The City staff's contrary administrative interpretation is therefore clearly erroneous and must be reversed.

II. The Equestrian Arena is Prohibited by the EOZD District Regulations

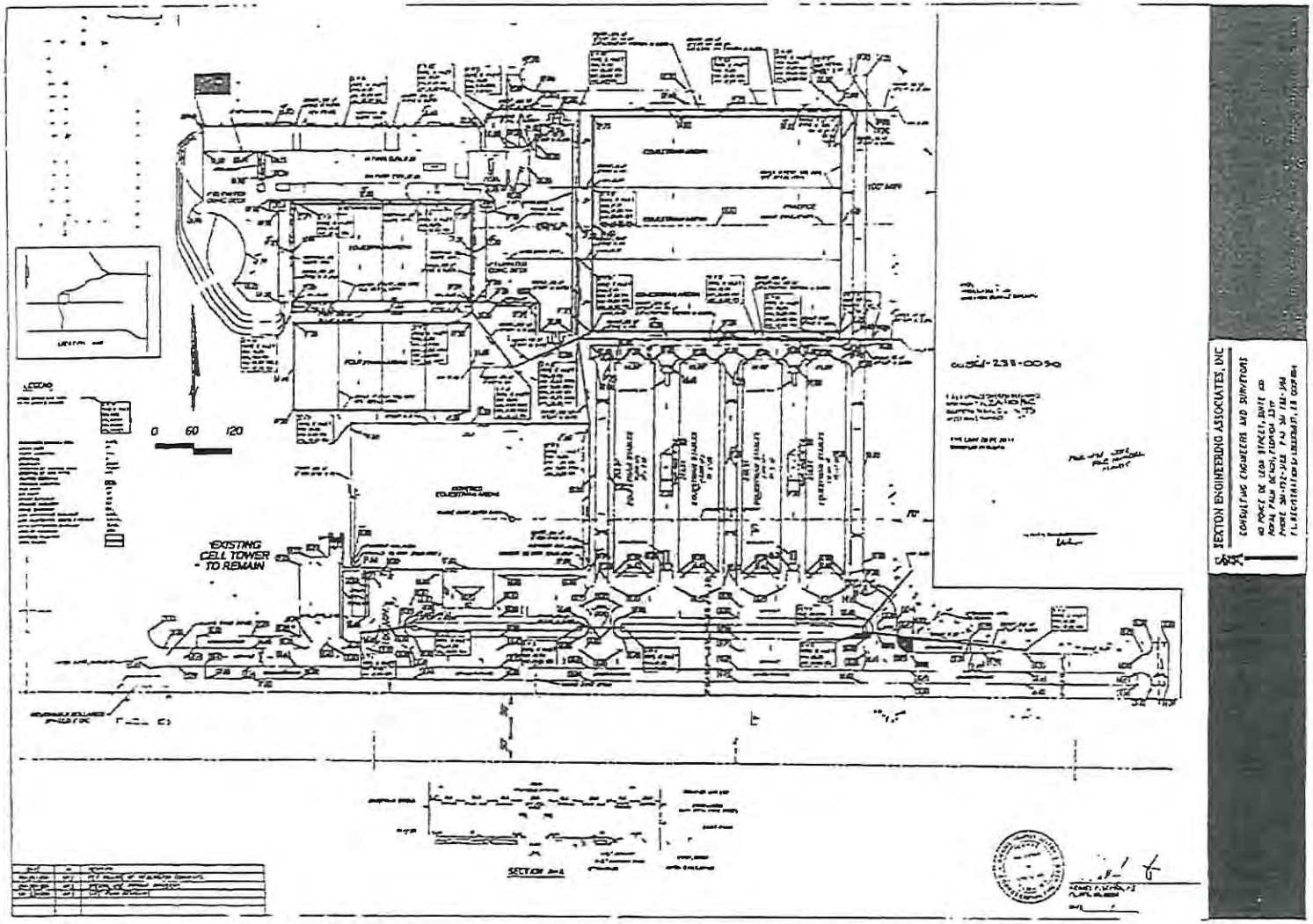
The Equestrian Arena is located within the Equestrian Overlay Zoning District ("EOZD"). *See* Exhibit A. The operative district regulations for the EOZD prohibit the development of any commercial structure in excess of 20,000 square feet of gross floor area. *See* Article 10, Sec. 6.10.11(d), City Code. Because the Equestrian Arena exponentially exceeds the ***maximum*** **permitted** commercial development intensity within the EOZD, it is prohibited therein. As such, it was clear and reversible error for the City's administration to approve its development within the EOZD District.

The Appellants reserve the right to supplement this appeal with additional legal authority and arguments if and when the City responds to their Public Records Act requests.

Sincerely yours,

John K. Shubin, Esq.
Jeffrey S. Bass, Esq.
Amy E. Huber, Esq.
For the firm

cc: Jeff Kurtz, Esq., City Attorney
Mr. David Flinchum, Planning & Zoning Manager


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EXISTING CELL TOWER TO REMAIN
SECTION A-A
SEXTON ENGINEERING ASSOCIATES, INC
CONSULTING ENGINEERS AND SURVEYORS

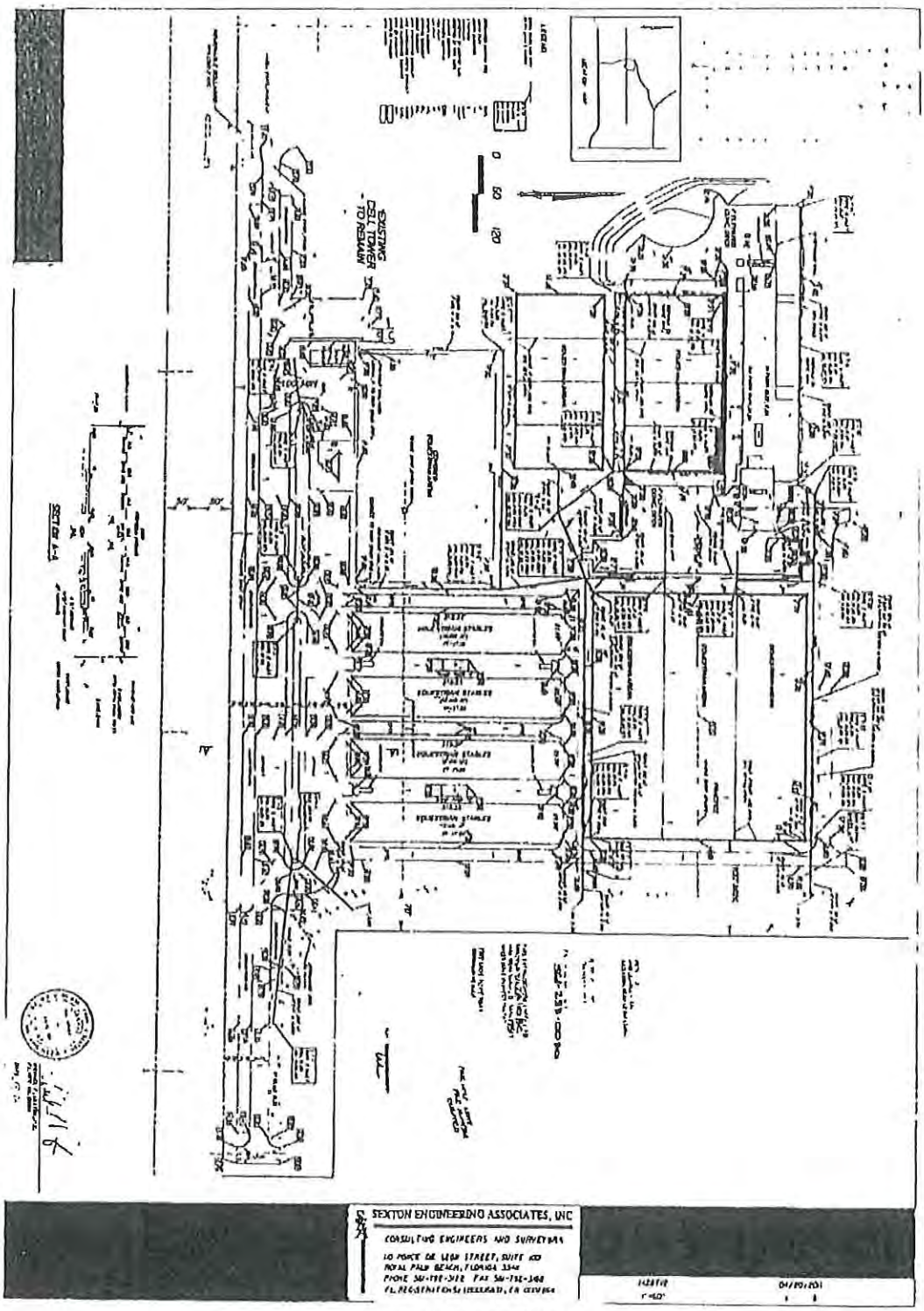

SEXTON ENGINEERING ASSOCIATES, INC
CONSULTING ENGINEERS AND SURVEYORS

EXHIBIT "B"

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PLANNING & ZONING INTERPRETATION REQUEST

I. PETITIONER OR AGENT INFORMATION

Petitioner(s) if other than owner(s) Charlie & Kim Jacobs / Solar Sportsystems, Inc
Address: 2730 Polo Island Dr #104 / 13207 Polo Club Rd, #104/105 City: Wellington ST: FL Zip: _____

Phone: _____ FAX: _____

Agent:* John Shubin, Jeff Bass, Amy Huber
Company Name: Shubin & Bass, P.A.
Address: 46 SW 1st St, 3rd FL City: Miami ST: FL Zip: 33130
Phone: 305.381.6060 FAX: 305.381.9457

*All correspondence will be sent to agent unless otherwise requested

II. INTERPRETATION REQUEST

A. INTERPRETATION REQUEST (State the Code and Section thereof for which the interpretation is requested. Be specific with respect to the nature of your interpretation request)
Section 6.5.B.C.2

The Commercial Covered Equestrian Arena is approximately 45 feet in height. The maximum permitted height for Commercial Recreation properties is 25 feet. The Commercial Covered Equestrian Arena violates Section 6.5.B.C.2.

See attached appeal

B. Project Name (if applicable):
Equestrian Village

C. Project Address (if applicable)

LAW OFFICES
SHUBIN & BASS
PROFESSIONAL ASSOCIATION

Via Hand Delivery

February 1, 2012

Ms. Awilda Rodriguez
City Clerk
City of Wellington
12300 Forest Hill Boulevard
Wellington, Florida 33414

Re: Appeal of Administrative Interpretation Re: Height of Equestrian Arena

Dear Ms. Rodriguez:

This correspondence is filed on behalf of Charles and Kimberly Jacobs and Solar Sportsystems, Inc. (collectively, the "Appellants"), the owners of real property located in the City of Wellington at 2730 Polo Island Drive, A-104, Wellington, Florida and 13307 Polo Club Road, C-104 and C-105, Wellington, Florida, respectively, and is intended to supplement the Appellants' two previous appeals filed yesterday and attached hereto as composite Exhibit "A." The Appellants also appeal the administrative interpretation related to the height of the Equestrian Arena located at Equestrian Village. ("Height Interpretation").

Please consider this correspondence as the Appellants' appeal of the Height Interpretation and corresponding request for a public hearing regarding same. If there are forms and/or fees associated with this Administrative Appeal, kindly identify them for us at your earliest convenience, and we will remit them forthwith.

I. Maximum Building Height

The City's Land Development Regulations, Florida law, and common sense require the reversal of the Subject Interpretation. The City's Code provides for the **maximum building height** of all structures in Section 6.5.1 and 6.5.8 of the City Code. Art. 6, Ch. 5, City Code. (Emphasis supplied). Section 6.5.8.C.2 of the City's Code requires that "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."** (emphasis supplied.) The Equestrian Village Property is designated Commercial Recreation with a maximum height limitation of twenty-five feet.

II. The Equestrian Arena is Prohibited by the Maximum Height Regulations for Commercial Recreation Properties

The Equestrian Arena is located within the Equestrian Overlay Zoning District ("EOZD") and has a Comprehensive Land Use Plan category of Commercial Recreation. The controlling regulations for CR designated properties prohibits properties in excess of 25 feet. Because the Equestrian Arena exponentially exceeds the ***maximum*** **permitted** height, it is prohibited therein. As such, it was clear and reversible error for the City's administration to approve the height of the arena in excess of 25 feet.

The Appellants reserve the right to supplement this appeal with additional legal authority and arguments if and when the City responds to their Public Records Act requests.

Sincerely yours,

John K. Shubin, Esq.
Jeffrey S. Bass, Esq.
Amy E. Huber, Esq.
For the firm

cc: Jeff Kurtz, Esq., City Attorney
Mr. David Flinchum, Planning & Zoning Manager

LAW OFFICES
SHUBIN & BASS
PROFESSIONAL ASSOCIATION

Via Electronic Mail
and U.S. Mail

January 31, 2012

Ms. Awilda Rodriguez
City Clerk
City of Wellington
12300 Forest Hill Boulevard
Wellington, Florida 33414

Re: Appeal of Administrative Interpretation Re: Equestrian Arena

Dear Ms. Rodriguez:

This appeal is filed on behalf of Charles and Kimberly Jacobs and Solar Sportsystems, Inc. (collectively, the "Appellants"), the owners of real property located in the City of Wellington at 2730 Polo Island Drive, A-104, Wellington, Florida and 13307 Polo Club Road, C-104 and C-105, Wellington, Florida, respectively. The Appellants are aggrieved and adversely affected by an administrative interpretation, rendered by the City, related to the calculation of Floor Area for an Equestrian Arena that is approximately 80,400 square feet in size (the "Subject Interpretation"). (The Equestrian Arena is described in detail in Exhibit A (attached)). The Subject Interpretation is erroneous and must be reversed.

Please consider this correspondence as the Appellants' appeal of the Subject Interpretation and corresponding request for a public hearing regarding same. If there are forms and/or fees associated with this Administrative Appeal, kindly identify them for us at your earliest convenience, and we will remit them forthwith.

I. The Equestrian Arena is a "Structure" with 80,400 square feet of Floor Area

The City's Land Development Regulations, Florida law, and common sense require the reversal of the Subject Interpretation. The City's Code defines "Floor Area" to mean "the ratio of the gross floor area of all structures on a lot to the lot area, excluding vertical core circulation areas for multistory structures. "Art. 3, Ch. 2, City Code. (Emphasis supplied). The City's Code defines "Structure" as "that which is three

40 S.W. 1st Street, 3rd Floor, Miami, FL 33130 Ph: 305-381-6060 Fx: 305-381-9457 www.shubinbass.com

COMPOSITE
EXHIBIT "A"

(3) feet or more in height, built or constructed or erected or tied down having a fixed location on the ground or attached to something having a permanent location on the ground, such as buildings, homes, mobile homes, towers, walls, fences, billboards, shore protection devices, and poster panels." *Id.*

Legally and grammatically, it is clear that the Equestrian Arena is a "structure" as that term is defined by the City Code and commonly understood. Because the Equestrian Arena is a *single-story* structure – no exception exists for the calculation of its floor area because the only enumerated definitional exception is limited to multistory structure which this is not. Under the doctrine of *expressio unius est exclusion alterius*, the Code's express mention of one exclusion directly implies that none other exists. By all measurements and all definitions then, the Equestrian Arena is – under the City's Code – a "structure" comprising 80,400 square feet of Floor Area. The City staff's contrary administrative interpretation is therefore clearly erroneous and must be reversed.

II. The Equestrian Arena is Prohibited by the EOZD District Regulations

The Equestrian Arena is located within the Equestrian Overlay Zoning District ("EOZD"). *See* Exhibit A. The operative district regulations for the EOZD prohibit the development of any commercial structure in excess of 20,000 square feet of gross floor area. *See* Article 10, Sec. 6.10.11(d), City Code. Because the Equestrian Arena exponentially exceeds the ***maximum*** **permitted** commercial development intensity within the EOZD, it is prohibited therein. As such, it was clear and reversible error for the City's administration to approve its development within the EOZD District.

The Appellants reserve the right to supplement this appeal with additional legal authority and arguments if and when the City responds to their Public Records Act requests.

Sincerely yours,

John K. Shubin, Esq.
Jeffrey S. Bass, Esq.
Amy E. Huber, Esq.
For the firm

cc: Jeff Kurtz, Esq., City Attorney
Mr. David Flinchum, Planning & Zoning Manager

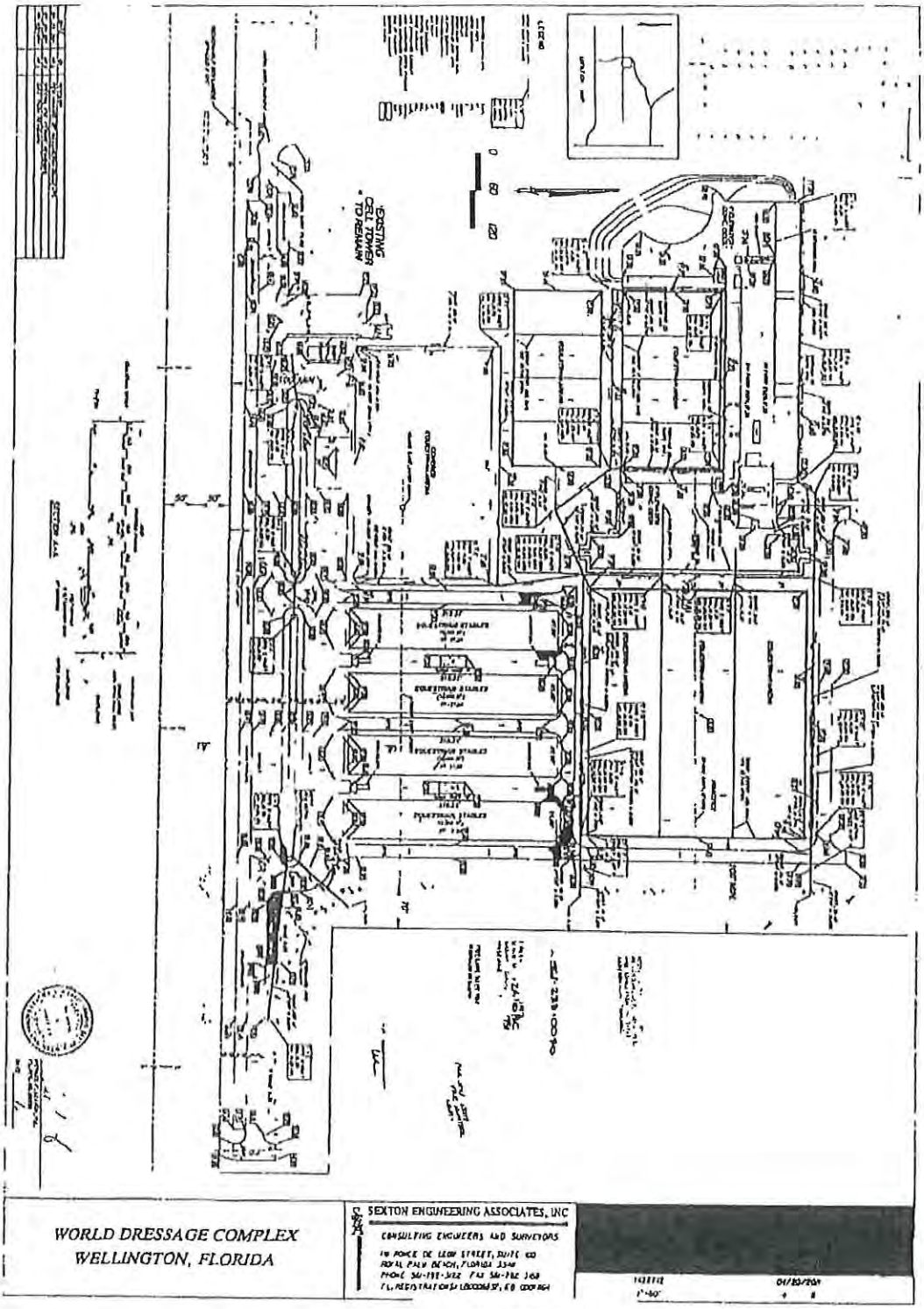

EXISTING CELL TOWER TO REMAIN
WORLD DRESSAGE COMPLEX
WELLINGTON, FLORIDA
SEXTON ENGINEERING ASSOCIATES, INC
CONSULTING ENGINEERS AND SURVEYORS

EXHIBIT "A"

LAW OFFICES
SHUBIN & BASS
PROFESSIONAL ASSOCIATION

Via Electronic Mail
and U.S. Mail

January 31, 2012

Ms. Awilda Rodriguez
City Clerk
City of Wellington
12300 Forest Hill Boulevard
Wellington, Florida 33414

Re: Appeal of Administrative Interpretation Re: Equestrian Arena Seating

Dear Ms. Rodriguez:

This correspondence is filed on behalf of Charles and Kimberly Jacobs and Solar Sportsystems, Inc. (collectively, the "Appellants"), the owners of real property located in the City of Wellington at 2730 Polo Island Drive, A-104, Wellington, Florida and 13307 Polo Club Road, C-104 and C-105, Wellington, Florida, respectively, and is intended to supplement the Appellants' previous appeal filed today and attached hereto as Exhibit "A." The Appellants also appeal the administrative interpretation related to the calculation of Floor Area for the Equestrian Arena Seating as depicted in Exhibit "B."("Seating Interpretation").

Please consider this correspondence as the Appellants' appeal of the Seating Interpretation and corresponding request for a public hearing regarding same. If there are forms and/or fees associated with this Administrative Appeal, kindly identify them for us at your earliest convenience, and we will remit them forthwith.

1. **The Equestrian Arena Seating is a "Structure" with Floor Area**

The City's Land Development Regulations, Florida law, and common sense require the reversal of the Subject Interpretation. The City's Code defines "Floor Area" to mean "the ratio of the gross floor area of all structures on a lot to the lot area, excluding vertical core circulation areas for multistory structures. "Art. 3, Ch. 2, City Code. (Emphasis supplied). The City's Code defines "Structure" as "that which is three (3) feet or more in height, built or constructed or erected or tied down having a fixed location on the ground or attached to something having a permanent location on the ground, such as buildings, homes, mobile homes, towers, walls, fences, billboards, shore protection devices, and poster panels." *Id.*

Legally and grammatically, it is clear that the Equestrian Arena Seating is a "structure" as that term is defined by the City Code and commonly understood. By all measurements and all definitions, the Equestrian Arena Seating is – under the City's Code – a "structure" comprising of square feet of Floor Area. The City staff's contrary administrative interpretation is therefore clearly erroneous and must be reversed.

II. The Equestrian Arena Seating is Prohibited by the EOZD District Regulations

The Equestrian Arena is located within the Equestrian Overlay Zoning District ("EOZD"). *See* Exhibit A. The operative district regulations for the EOZD prohibit the development of any commercial structure in excess of 20,000 square feet of gross floor area. *See* Article 10, Sec. 6.10.11(d), City Code. Because the Equestrian Arena exponentially exceeds the ***maximum* permitted** commercial development intensity within the EOZD, it is prohibited therein. As such, it was clear and reversible error for the City's administration to approve its development within the EOZD District.

The Appellants reserve the right to supplement this appeal with additional legal authority and arguments if and when the City responds to their Public Records Act requests.

Sincerely yours,

John K. Shubin, Esq.
Jeffrey S. Bass, Esq.
Amy E. Huber, Esq.
For the firm

cc: Jeff Kurtz, Esq., City Attorney
Mr. David Flinchum, Planning & Zoning Manager

LAW OFFICES
SHUBIN & BASS
PROFESSIONAL ASSOCIATION

Via Electronic Mail
and U.S. Mail

January 31, 2012

Ms. Awilda Rodriguez
City Clerk
City of Wellington
12300 Forest Hill Boulevard
Wellington, Florida 33414

Re: Appeal of Administrative Interpretation Re: Equestrian Arena

Dear Ms. Rodriguez:

This appeal is filed on behalf of Charles and Kimberly Jacobs and Solar Sportsystems, Inc. (collectively, the "Appellants"), the owners of real property located in the City of Wellington at 2730 Polo Island Drive, A-104, Wellington, Florida and 13307 Polo Club Road, C-104 and C-105, Wellington, Florida, respectively. The Appellants are aggrieved and adversely affected by an administrative interpretation, rendered by the City, related to the calculation of Floor Area for an Equestrian Arena that is approximately 80,400 square feet in size (the "Subject Interpretation"). (The Equestrian Arena is described in detail in Exhibit A (attached)). The Subject Interpretation is erroneous and must be reversed.

Please consider this correspondence as the Appellants' appeal of the Subject Interpretation and corresponding request for a public hearing regarding same. If there are forms and/or fees associated with this Administrative Appeal, kindly identify them for us at your earliest convenience, and we will remit them forthwith.

I. **The Equestrian Arena is a "Structure" with 80,400 square feet of Floor Area**

The City's Land Development Regulations, Florida law, and common sense require the reversal of the Subject Interpretation. The City's Code defines "Floor Area" to mean "the ratio of the gross floor area of all structures on a lot to the lot area, excluding vertical core circulation areas for multistory structures. "Art. 3, Ch. 2, City Code. (Emphasis supplied). The City's Code defines "Structure" as "that which is three

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EXHIBIT "A"

(3) feet or more in height, built or constructed or erected or tied down having a fixed location on the ground or attached to something having a permanent location on the ground, such as buildings, homes, mobile homes, towers, walls, fences. billboards, shore protection devices, and poster panels." *Id.*

Legally and grammatically, it is clear that the Equestrian Arena is a "structure" as that term is defined by the City Code and commonly understood. Because the Equestrian Arena is a *single-story* structure – no exception exists for the calculation of its floor area because the only enumerated definitional exception is limited to multistory structure which this is not. Under the doctrine of *expressio unius est exclusion alterius*, the Code's express mention of one exclusion directly implies that none other exists. By all measurements and all definitions then, the Equestrian Arena is – under the City's Code – a "structure" comprising 80,400 square feet of Floor Area. The City staff's contrary administrative interpretation is therefore clearly erroneous and must be reversed.

II. The Equestrian Arena is Prohibited by the EOZD District Regulations

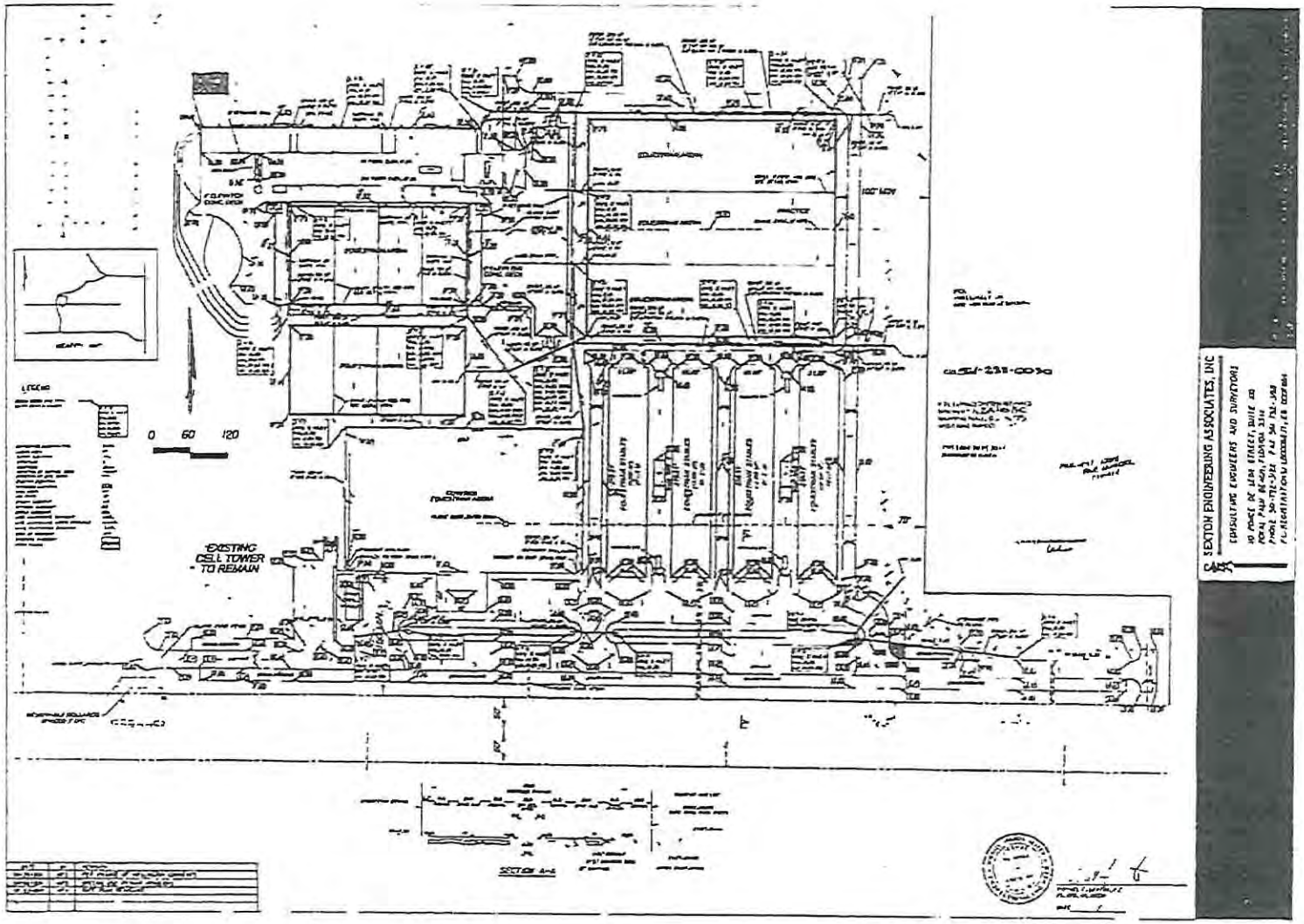
The Equestrian Arena is located within the Equestrian Overlay Zoning District ("EOZD"). *See* Exhibit A. The operative district regulations for the EOZD prohibit the development of any commercial structure in excess of 20,000 square feet of gross floor area. *See* Article 10, Sec. 6.10.11(d), City Code. Because the Equestrian Arena exponentially exceeds the ***maximum*** permitted commercial development intensity within the EOZD, it is prohibited therein. As such, it was clear and reversible error for the City's administration to approve its development within the EOZD District.

The Appellants reserve the right to supplement this appeal with additional legal authority and arguments if and when the City responds to their Public Records Act requests.

Sincerely yours,

John K. Shubin, Esq.
Jeffrey S. Bass, Esq.
Amy E. Huber, Esq.
For the firm

cc: Jeff Kurtz, Esq., City Attorney
Mr. David Flinchum, Planning & Zoning Manager



SEXTON ENGINEERING ASSOCIATES, INC

CONSULTING ENGINEERS AND SURVEYORS

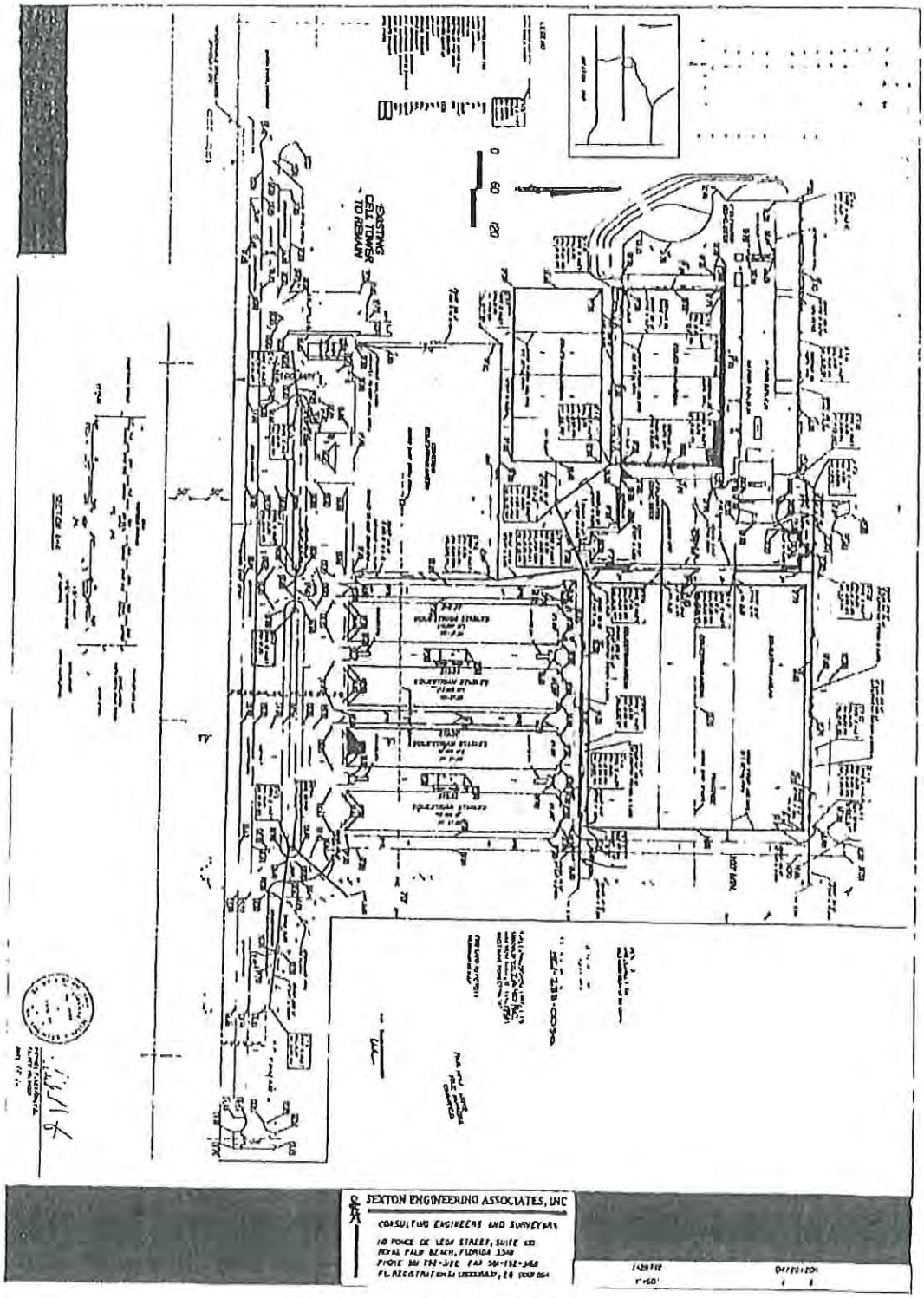

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CONSULTING ENGINEERS AND SURVEYORS

EXHIBIT "B"

WELLINGTON

A Great Hometown...
Let Us Show You!

Planning, Zoning Division
12300 Forest Hill Blvd., Wellington, FL 33414 (561) 791-4000 pzapplications@wellingtonfl.gov

PLANNING & ZONING INTERPRETATION REQUEST

I. PETITIONER OR AGENT INFORMATION

Petitioner(s) if other than owner(s): Charlie & Kim Jacobs/ Solar Sportsystems, Inc.
Address: 2730 Polo Island Dr., A104 / 13207 Polo Club Rd, C104/C105 City: Wellington ST: FL Zip: _____

Phone: _____ FAX: _____

Agent: * John Shubin, Jeff Bass, Amy Huber
Company Name: Shubin & Bass, P.A.
Address: 46 SW 1st St, 3rd Floor City: Miami ST: FL Zip: 33130
Phone: 305 · 381 · 6060 FAX: 305 · 381 · 9457

*All correspondence will be sent to agent unless otherwise requested

II. INTERPRETATION REQUEST

A. INTERPRETATION REQUEST (State the Code and Section thereof for which the interpretation is requested. Be specific with respect to the nature of your interpretation request):
Article 10, section 6.10.11(d).

The Commercial stables, in their entirety - are structures - and exceed the 20,000 commercial use limited in EOZD. The Commercial stables violate sec. 6.10.11(d.)

See attached appeal.

B Project Name (If applicable):
Equestrian Village

C Project Address (If applicable):

Amy Huber

From:	Amy Huber
Sent:	Wednesday, April 18, 2012 7:19 PM
To:	'arodriguez@wellingtonfl.gov'; 'jkurtz@wellingtonfl.gov'; 'rbasehart@wellingtonfl.gov'; 'dflinchim@wellingtonfl.gov'; 'pschofield@wellingtonfl.gov'
Cc:	John Shubin
Subject:	Appeal of Administrative Interpretation - Barn FAR letter
Attachments:	bellissimo barns FAR.docx
Importance:	High

Dear Ms. Rodriguez:

This correspondence is filed on behalf of Charles and Kimberly Jacobs and Solar Sportsystems, Inc. (collectively, the "Appellants"), the owners of real property located in the City of Wellington at 2730 Polo Island Drive, A-104, Wellington, Florida and 13307 Polo Club Road, C-104 and C-105, Wellington, Florida, respectively, and is intended to appeal the administrative interpretation related to the calculation of Floor Area for the east and west barns (the "Subject Interpretation")(A true and correct copy of the Subject Interpretation is attached to this e-mail).

Please consider this correspondence as the Appellants' appeal of the Subject Interpretation and corresponding request for a public hearing regarding same. This appeal is filed in an abundance of caution via e-mail this evening, as we only learned of this Interpretation less than hour ago, despite our numerous public records act requests and specific requests for this exact information. If there are forms and/or fees associated with this Administrative Appeal, kindly identify them for us at your earliest convenience, and we will remit them forthwith.

I. **The Stables in their Entirety are Structures with Floor Area**

The City's Land Development Regulations, Florida law, and common sense require the reversal of the Subject Interpretation. The City's Code defines "Floor Area" to mean "the ratio of the gross floor area of all structures on a lot to the lot area, excluding vertical core circulation areas for multistory structures. "Art. 3, Ch. 2, City Code. (Emphasis supplied). The City's Code defines "Structure" as "that which is three (3) feet or more in height, built or constructed or erected or tied down having a fixed location on the ground or attached to something having a permanent location on the ground, such as buildings, homes, mobile homes, towers, walls, fences, billboards, shore protection devices, and poster panels." *Id.*

Legally and grammatically, it is clear that the Stables – in their entirety - are "structures" as that term is defined by the City Code and commonly understood. By all measurements and all definitions, the entire floor area of each stable is – under the City's Code – a "structure" comprising of square feet of Floor Area. The City staff's contrary administrative interpretation is therefore clearly erroneous and must be reversed.

II. **Commercial Use in Excess of 20,000 sq. ft is Prohibited by the EOZD District Regulations**

The Stables are located within the Equestrian Overlay Zoning District ("EOZD"). The operative district regulations for the EOZD prohibit the development of any commercial use in excess of 20,000 square feet of gross floor area. *See* Article 10, Sec. 6.10.11(d), City Code. Because the

Stables exponentially exceed the ***maximum* permitted** commercial development intensity within the EOZD, it is prohibited therein. As such, it was clear and reversible error for the City's administration to approve its development within the EOZD District.

The Appellants reserve the right to supplement this appeal with additional legal authority and arguments if and when the City provides us with the additional documentation requested as they were required to do by law.

Thank you for your anticipated attention to this matter.

Amy E. Huber, Esq.
Shubin & Bass, P.A.
46 S.W. 1st Street
Third Floor
Miami, Florida 33130
ahuber@shubinbass.com
Tel. (305) 381-6060
Fax (305) 381-9457

Attention: The information contained in this e-mail message is confidential information and privileged. The information contained herein is intended solely for the use of the individual(s) named above. If the recipient of this message is not the intended recipient, you are hereby notified that any distribution or dissemination of this communication is strictly prohibited. In the event that you have received this communication in error, please contact the sender by reply e-mail and destroy any and all copies of the original message.

From: Jeff S. Kurtz [mailto:jkurtz@wellingtonfl.gov]
Sent: Wednesday, April 18, 2012 6:50 PM
To: John Shubin; Amy Huber
Subject: FW: Barn FAR letter

Copy of barn FAR letter.

From: Robert Basehart
Sent: Wednesday, April 18, 2012 6:26 PM
To: Jeff S. Kurtz
Subject: Barn FAR letter

Robert Basehart, AICP
Growth Management Director
Wellington, Florida
12300 Forest Hill Boulevard, Wellington, Fl 33414
561/753-2578 FAX 561/791-4045

E-mail addresses are public record under Florida Law and are not exempt from public records request laws. If you do not want your e-mail address to be subject to being released pursuant to a public-records request do not send electronic mail to this entity. Instead, contact this office by telephone or in writing via the United States Postal Service.
Communications made through e-mail or any other computer messaging system shall in no way be deemed to constitute legal notice to The City of Wellington or any of its agencies, officers or employees, agents or representatives with respect to any existing or pending action or claim.

WELLINGTON

A GREAT HOMETOWN

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

Manager
Paul Schofield

March 20, 2012

Mark Bellissimo, Managing Member
Far Niente Stables II, LLC
114440 Pierson Road
Wellington, Florida 33414

SUBJECT: STABLE STRUCTURES AT EQUESTRIAN VILLAGE EQUESTRIAN VILLAGE PROPERTY (aka POLO VILLAGE II); PROPERTY (59.29 ACRES) LOCATED AT N.E. CORNER OF SOUTH SHORE BLVD & PIERSON RD., WELLINGTON.

Dear Mr. Bellissimo:

This letter is to inform you that after having reviewed the physical construction of the recently installed stable structures at the above referenced property it is our determination the majority of the area under roof in each structure must be counted as floor area.

Originally, descriptions that you gave indicated the interior stalls would not be attached to structural components supporting the roofs and the top of the stalls would be substantially below the eve line of the buildings. This would have resulted in a true and readily apparent separation between the roof structure and the individual horse stalls. It was understood the stable structures would have no walls on any side. We were told that stables & structures would be constructed just like the stables at the Jim Brandon Equestrian Center owned and operated by Palm Beach County. After having visited the Jim Brandon Center, we were in agreement that your proposed stable buildings could qualify to not count as building square footage for the purpose of calculating the floor area ratio for the overall Equestrian Village site.

After having visited your site and inspected the completed stable buildings, we have concluded what has been constructed is not consistent with our earlier understanding, and that the buildings do not meet the test for exclusion from floor area calculations. The exterior face of the structure constitutes a wall system both visually and as a practical matter a part of the overall structural support. The end walls absolutely enclose the structure and the stable units extend up to essentially eave level and are physically attached to structural components. Since the majority of the sides of the structure are enclosed by walls, the majority of the interior area will be considered as building floor area.

I am willing to exclude from the floor area calculations the unenclosed patio areas under roof at both ends of the building, as well as the east/west pass-through isles between the banks of stalls (since they do not have side walls).

This accommodation will reduce the floor area of the stable buildings to approximately 62.4% of the area under roof, which will result in a calculated floor area of 12,295 square feet per building for the19, 698 sq. ft per building area under roof. I certainly invite you to provide more exact calculations and am open to making reasonable adjustments with any supportive documentation you may provide.

Please also be advised that in the event you believe that my determination is not correct, you have the right to appeal it to the Planning, Zoning & Appeals Board. They are empowered to make binding interpretations on the provisions of the Village's Land Development Code.

If you have any questions relative to any of the information provided in this letter, please do not hesitate to contact me..

Very truly yours,

Robert E. Basehart, AICP
Growth Management Director

Cc: Paul Schofield, Village Manager
Jim Barnes, Director of Operations
Jeff Kurtz, Village Attorney
David Flinchum, Planning & Zoning Manager
Jacek Tomasik, Building Official

EXHIBIT B

Sec. 1.12.1. *Interpretations.*

A. **Authority.** Interpretations to this Code shall be made by the Planning & Zoning Director and the Village Engineer. The Village Engineer shall have the authority to make all interpretations of Sec. 7.7, Driveways and Access; Article 15, Traffic Performance Standards; and Art. 8, Subdivision. The Director of PZ shall have the authority to make all interpretations of Natural Resource Protection Regulations, Sec. 7.6, Excavation, and Art. 9, Environmental Standards. The Village Attorney shall have the authority to make all interpretations of Article 7, Sec.7.15, Maintenance and Use Documents. The Planning & Zoning Director shall have the authority to make interpretations of all other provisions of this Code and the Future Land Use Map.

B. **Initiation.** An interpretation may be requested by any landowner 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 procedures of this Code.

C. **Procedures:**

1. Submission of request for interpretation. Before an interpretation shall be provided by the appropriate Village official, a Request for Interpretation shall be submitted to the appropriate Village official in a form established by that Village official and made available to the public. The request shall be accompanied by a fee established by the Village Council from time to time for the filing and processing of the Request for Interpretation. The fee shall be non-refundable.
2. Determination of sufficiency. Within five (5) working days after a Request for Interpretation has been submitted, the Village official responsible for rendering the interpretation shall determine whether it is sufficient.
   a. Determined not sufficient. If the Village official determines that the request is not sufficient, a written notice shall be served on the applicant specifying the deficiencies. The Village official shall take no further action on the Request for Interpretation until the deficiencies are remedied. If the applicant fails to correct the deficiencies within ten (10) working days, the Request for Interpretation shall be considered withdrawn.
   b. Determined sufficient. When the Request for Interpretation is determined sufficient, the Village official shall review and render an interpretation pursuant to the procedures and standards of this article.
3. Rendering of interpretation. Within fifteen (15) working days after the Request for Interpretation has been determined sufficient, the Village official responsible for rendering the interpretation shall review and evaluate the request in light of the Comprehensive Plan, this Code, and the Future Land Use Map, whichever is applicable, consult with the Village Attorney, and then render an interpretation.

D. **Form.** The interpretation shall be in writing and shall be sent to the applicant by mail within five (5) working days after the interpretation is made by the appropriate Village official.

E. **Appeal:**

1. Initiation. Twenty (20) working days after issuance of a written interpretation by the appropriate Village official responsible for rendering the interpretation, the applicant may appeal the decision to the Board responsible for appeal, as provided in this Code.
2.

Public hearing. The Board responsible for the appeal shall hold a hearing on the appeal within forty (40) working days of the appeal.

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.

F. **Official record.** Each Village official responsible for rendering an interpretation shall maintain a record of the interpretation, and forward a copy to the Planning & Zoning Director. This record shall be available for public inspection, upon reasonable request, during normal business hours.

WELLINGTON

A GREAT HOMETOWN

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

Manager
Paul Schofield

December 24, 2013

John Shubin, Esq./Jeff Bass, Esq./Amy Huber, Esq.
Law Offices of Shubin & Bass
45 S.W. 1st Street, 3rd Floor
Miami, Florida 33130
Jupiter, Florida 33458

SUBJECT: **Requests for Planning & Zoning interpretation related to Chapter 10, Section 6.10.11(D) and Article 6, Section 6.5.8.C.2 of the Village of Wellington land Development Regulations. Issues addressed are the size of the barns (aggregate), covered arena, viewing deck/vender area/seating area at the property/project known as the Equestrian Village.**

Dear Msrs. Shubin & Bass and Ms. Huber:

This letter is in response to your request for interpretation of the above referenced provisions of the Village of Wellington Land Development Regulations. Your request for interpretation includes an opinion that the existing facilities referenced above were approved erroneously, because they do not comply with the Code provisions referenced. The Village staff interpretations of the subject provisions are as follows:

Chapter 10, Section 6.10.11(D):

This provision is a subsection of Section 6.10.11, which provides Development Standards for commercial uses within the Equestrian Overlay Zoning District (EOZD). The subsection in question provides that single (individual) uses governed therein shall not exceed a gross floor area of twenty thousand (20,000) square feet. You note that several uses of the Equestrian Village site exceed 20,000 square feet. In your various request forms you include the stables, the covered equestrian arena structure, viewing deck, and the outdoor seating/vendor areas.

The staff's interpretation of the provisions of Section 6.10.11 is that the intent of this Section is to regulate retail development allowed within the EOZD, and that the size limitation provided in Subsection 6.10.11(D) does not apply to the structures or uses that are referenced in your request. This interpretation is supported by the intent statement at the beginning of the Section, where it is stated that commercial uses regulated by this section shall be limited to those that provide goods and services that serve the equestrian and agricultural community. This is repeated in Subsection B (Orientation and Scale) where it indicates that commercial uses should be oriented toward agricultural and equestrian uses of a community serving nature, which implies retail and service oriented uses. Further, in Subsection C (Architecture) it is stated that commercial buildings and centers should be of a mass, bulk and style that is consistent with equestrian uses such as barns and stables. This is a clear indication that structures that serve agricultural or equestrian activities and uses such as barns, stables, arenas, spectator areas and uses are not intended to be considered commercial for the application of the development standards of this section.

EXHIBIT
tabbies
C

This interpretation is not one that has been made as a part of the review and permitting for the Equestrian Village project. I am attaching a copy of an interpretation/policy memo that was made in 2004. Although the actual Section number has changed slightly due to LDR amendments to the EOZD, the subject matter is the same provision which you are currently addressing.

The one part of your inquiry that we believe is subject to the 20,000 square foot limitation are retail uses. Subsection 6.10.11(D) provides that the gross floor area limitation applies to any single use on the site. This would apply to any individual business, but does not limit the total floor area of any category of use cumulatively. Therefore, in the vendor area, the total floor area allowed for any individual vendor space is 20,000 square feet, but the cumulative floor area for vendors is not limited by this provision. The same would also apply to restaurant spaces. No individual restaurant or food service space can exceed 20,000 square feet, but the cumulative total of restaurant space is not regulated by this provision. Barns are not regulated by this provision, as noted above. However, even if they were, each barn would be regulated individually. Since the two constructed barns are both less than 20,000 square feet in size, there would be no Code issue.

It is important to note the equestrian arena is a structure or use which is not regulated by the provisions of Section 6.10.11(D). Further, as you are aware, it is the staff's opinion that the structure in question has no floor area, by definition. In the past you have expressed disagreement with this interpretation. However, that issue has not been addressed in your current request for interpretation. Therefore, it is our understanding that you are not currently pursuing the issues of the floor area calculation for the barn structure or the covered arena structure.

Article 6, Section 6.5.8.C.2:

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.

If you have any questions regarding this matter or action, please do not hesitate to contact me.

Very truly yours,

Robert E. Basehart

Robert E. Basehart, AICP
Project Director

Cc: Paul Schofield, Village Manager
Tim Stillings, Planning and Development Services Director
Laurie Cohen, Village Attorney
David Flinchum, Planning & Zoning Manager

VILLAGE OF WELLINGTON
Planning, Zoning & Building Department

Policy Number P&D-2004-000-01
Date Approved: June 17, 2004

SUBJECT:	Commercial developments within the Equestrian Overlay Zoning District (EOZD)
CROSS-REFERENCE:	Section 6.10.K. of the Unified Land Development Code (ULDC).
PURPOSE:	To clarify what type of commercial development is governed by the Commercial Development Standard of the EOZD.
POLICY:	Section 6.10.K. of the ULDC outlines land development regulations for commercial development within the EOZD. Included in Section 6.10.K. are regulations for: 1. Planned Development Rezoning; 2. Orientation and Scale; 3. Architecture; 4. Size; 5. Hours of Operation; 6. Lighting; 7. Outdoor Display and Storage; and 8. Buffers. The intent of Section 6.10.K. was to specifically regulate commercial retail development. There were no intentions for this provision to apply to commercial stables.
PROCEDURE:	The Planning and Zoning Division will review petitions for commercial developments within the EOZD in according with this policy.

Paul Schofield, AICP
Community Service Director

Caryn Gardner-Young, AICP
Planning and Zoning Director

Filing # 13180249 Electronically Filed 05/01/2014 04:20:10 PM

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

POLO FIELD ONE, LLC, STADIUM NORTH, LLC, STADIUM SOUTH, LLC, FAR NIENTE STABLES II, LLC and EQUESTRIAN SPORT PRODUCTIONS, LLC

Plaintiffs,

v.

CHARLES JACOBS and KIMBERLY JACOBS, Husband and Wife, SOLAR SPORTSYSTEMS, INC., a New York Corporation and THE VILLAGE OF WELLINGTON, a Municipal Corporation of the State of Florida

Defendants.

_____/

CASE NO. 502014CA003331XXXXMB

PLAINTIFFS' MOTION FOR TEMPORARY INJUNCTION

Plaintiffs, Polo Field One, LLC, Stadium North, LLC, Stadium South, LLC, Far Niente Stables II, LLC, and Equestrian Sport Productions, LLC (collectively, the "Owners") by and through their undersigned counsel, move for a temporary injunction and state as follows:

INTRODUCTION

This matter involves the implementation and enforcement of an arbitrary and capricious ordinance, § 1.12.1. of the Village of Wellington's Land Development Regulations (the "Code"), against the Owners, and the resulting harm caused to Owners. Specifically, the Village of Wellington's (the "Village") implementation of § 1.12.1 has wrongfully deprived the Owners of their right to substantive due process under the United States and Florida Constitutions. Moreover, the Village's enforcement of the ordinance has stripped Owners of their vested rights to development orders previously issued by the Village. Owners seek relief from the continuing

harmful effects of the Village's implementation and enforcement of § 1.12.1 and to maintain the status quo until the Court can fully adjudicate the issue raised herein. Accordingly, the Owners request a temporary injunction prohibiting the Village from conducting an appeals hearing before its Planning Zoning and Adjustment Board ("PZAB") on the § 1.12.1 issues, currently scheduled to occur on June 30, 2014; and a temporary injunction prohibiting the Village from commencing any other proceeding pursuant to § 1.12.1 relating to the Owners' Property.

FACTUAL BACKGROUND

Section 1.12.1

Section 1.12.1.B of the Code enables certain persons or entities to obtain an interpretation of how specific Code provisions apply to and affect property. Section 1.12.1.C of the Code outlines the procedures for obtaining an interpretation, as well as the procedures the Village must follow in rendering an interpretation. In particular, §§ 1.12.1.B and 1.12.1.C state the following:

> B. **Initiation.** An interpretation may be requested by any landowner 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 procedures of this Code.
>
> C. **Procedures:**
> 1. Submission of request for interpretation. Before an interpretation shall be provided by the appropriate Village official, a Request for Interpretation shall be submitted to the appropriate Village official in a form established by that Village official and made available to the public. The request shall be accompanied by a fee established by the Village Council from time to time for the filing and processing of the Request for Interpretation. The fee shall be non-refundable.
> 2. Determination of sufficiency. Within five (5) working days after a Request for Interpretation has been submitted, the Village official responsible for rendering the interpretation shall determine whether it is sufficient.
>
> a. Determined not sufficient. If the Village official determines that the request is not sufficient, a written notice shall be served on the applicant specifying the deficiencies. The Village official shall take no further action on the Request for Interpretation until the deficiencies are remedied. If the applicant fails to correct the deficiencies within ten (10)

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> working days, the Request for Interpretation shall be considered withdrawn.
>
> b. Determined sufficient. When the Request for Interpretation is determined sufficient, the Village official shall review and render an interpretation pursuant to the procedures and standards of this article.
>
> 3. Rendering of interpretation. Within fifteen (15) working days after the Request for Interpretation has been determined sufficient, the Village official responsible for rendering the interpretation shall review and evaluate the request in light of the Comprehensive Plan, this Code, and the Future Land Use Map, whichever is applicable, consult with the Village Attorney, and then render an interpretation.

The Village has taken the position that, "an interpretation may be requested by any landowner in the Village of Wellington" and landowners are not limited to obtaining interpretations relating to property in which they have an ownership or contractual interest. *See* Village's Motion to Dismiss, fn. 1.

Further, § 1.12.1.E enables a requesting party to appeal an interpretation issued by the Village to Wellington's Planning, Zoning and Adjustment Board ("PZAB"):

> E. **Appeal:**
>
> 1. Initiation. Twenty (20) working days after issuance of a written interpretation by the appropriate Village official responsible for rendering the interpretation, the applicant may appeal the decision to the Board responsible for appeal, as provided in this Code.
>
> 2. Public hearing. The Board responsible for the appeal shall hold a hearing on the appeal within forty (40) working days of the appeal.
>
> 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 appeal is heard by PZAB in a quasi-judicial hearing. Accordingly, any interested party to the PZAB proceeding has a right to appeal the PZAB determination to the Circuit Court by a first

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tier petition for writ of certiorari. A second tier certiorari review is also available after the first tier certiorari review is final.

The Subject Property and the Section 1.12.1 Proceedings

Between 2011 and 2013, Owners obtained various development orders from the Village, pursuant to the Village's permitting and review process, to develop a 59.3 acre parcel of property (the "Subject Property") as an equestrian facility (the "Equestrian Village project"). After obtaining all of those development orders, Owners constructed various structures upon the Subject Property including barns, a covered arena, riding rings, restrooms, offices, manure bins, a viewing deck/seating area, and horse wash racks. On December 6, 2013, after all of the required development orders were issued by the Village, and the structures had already been constructed, Charles Jacobs, Kimberly Jacobs, and Solar Sportsystems, Inc. submitted four Planning and Zoning Interpretation Requests (collectively the "Interpretation Requests") to the Village pursuant to § 1.12.1 of the Code. *See* Interpretation Requests attached hereto as ***Composite Exhibit "A"***.

The Village accepted the Jacobs' requests as a request for interpretation under § 1.12.1, and issued a written interpretation dated December 24, 2013. *See* Village's written interpretation attached hereto as ***Exhibit "B"***. The Jacobs appealed the Village's interpretation pursuant to § 1.12.1.E of the Code. Accordingly, the Village has scheduled the appeal to be heard before PZAB on June 30, 2014. *See* Notice of Hearing attached hereto as ***Exhibit "C"***. The "Interpretation Requests" submitted by the Jacobs request an interpretation of how Code provisions pertaining to size and height restrictions apply to existing barns, a covered arena, and a viewing deck/seating area (the "existing structures") located upon the Subject Property.

As discussed above, a PZAB hearing is just the first level of appellate review, and any interested party to the PZAB hearing may appeal PZAB's determination to the Circuit Court by a first tier petition for writ of certiorari. Parties may then seek an additional level of review by submitting a second tier petition for writ of certiorari to the district court. Consequently, the existing structures and development orders may be subjected to *four* levels of challenge and review as a result of the Village's issuance of an interpretation pursuant to § 1.12.1: (1) the Village's Official Interpretation; (2) the PZAB's determination; (3) the Circuit Court's determination in its appellate capacity on first tier certiorari review; and (4) the District Court's determination on second tier certiorari review. Moreover, the final outcome of the § 1.12.1 proceedings will be binding on the Owners vis-a-vis the Village, because the ultimate decision will be applied to the Subject Property by the Village.

Because the issuance of an interpretation to the Jacobs' has affected and infringed upon Owners' property rights, Owners filed their six-count Amended Complaint for Declaratory and Injunctive Relief (the "Amended Complaint"). Two Counts seek injunctive relief and are at issue here. Count IV seeks injunctive relief on the basis that the Village's enactment and implementation of § 1.12.1 has violated Owners' right to substantive due process under the Federal and State Constitutions. Count VI is an alternative cause of action to Count IV, and seeks injunctive relief on the basis that the Village's commencement of § 1.12.1 proceedings pursuant to the Jacobs' Interpretation Requests divests Owners' of their vested rights to development orders associated with the Subject Property.

ARGUMENT IN SUPPORT OF TEMPORARY INJUNCTION

A temporary injunction enjoining the commencement and/or continuation of § 1.12.1 proceedings directed toward the Subject Property is necessary to prevent the Village from

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arbitrarily and capriciously interfering with the Owners' property rights. This Court has jurisdiction to hear constitutional claims pursuant to § 26.02, Florida Statutes and Article 5, § 5(b) of the Florida Constitution. The claims raised in this Motion and the Amended Complaint are properly before the Court at this time because there are no administrative remedies available before the Village to prevent the Village from issuing administrative interpretations to individuals or entities for property that they do not have an ownership or contractual interest in pursuant to § 1.12.1.

For the reasons set forth below, the Owners have a clear legal right to a temporary injunction because (i) they have a substantial likelihood of success on the merits of their Substantive Due Process Claim (Count IV) and Vested Rights/Estoppel Claim (Count VI) claims; (ii) the Owners will likely suffer irreparable harm without the requested injunction; (iii) the Owners have no adequate remedy at law; and (iv) the requested injunctive relief will not adversely affect the public interest. *Manatee County v. 1187 Upper James of Florida, LLC*, 104 So. 3d 1118 (Fla. 2d DCA 2012) (A temporary injunction should be granted if the movant establishes a likelihood of irreparable harm; the unavailability of an adequate legal remedy; a substantial likelihood of success on the merits; and the public interest is supported by entry of an injunction).

I. The Owners Have A Substantial Likelihood of Success on the Merits.

a. *Substantive Due Process*

Owners. through Count IV of the Amended Complaint, seek an injunction prohibiting the Village from commencing or continuing any legal proceedings pursuant to § 1.12.1 of the Code relating to the Subject Property because § 1.12.1 is an unconstitutional, arbitrary and capricious ordinance. The substantive component of the Due Process Clause of the Fourteenth Amendment

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of the United States Constitution and Article I, § 9 of the Florida Constitution protects a person's state-created rights from arbitrary and capricious legislative actions of government. *Romero v. Watson*, 2009 WL 1361714 at *3-4 (N.D. Fla. May 13, 2009); *Lewis v. Brown*, 409 F. 3d 1271, 1273 (11th Cir. 2005); *Nationwide Mut. Fire Ins. Co. v. Pinnacle Medical, Inc.*, 753 So. 2d 55 (Fla. 2000). If a person's state created rights are infringed upon by a legislative act, the substantive components of the Due Process Clause and Article I, § 9 of the Florida Constitution will protect that person from a government's arbitrary and irrational action. *Id.*

The Village's enactment of § 1.12.1 is a legislative act because it resulted in a Village ordinance that may be utilized and enforced against all persons or entities who own real property in Wellington. *Foley v. Orange County*, 2013 WL 4110414 at *11 (M.D. Fla. August, 13, 2013) (citing *Dekalb Stone, Inc. v. County of Dekalb, Ga.*, 106 F. 3d 956 (11th Cir. 1997) ("Legislative acts . . . 'generally apply to larger segments of – if not all – society . . . laws and broad-ranging executive regulations' [are] common examples of legislative acts"). As discussed above in greater detail, § 1.12.1 grants third-parties an opportunity to obtain an official Village interpretation of how Code provisions relate to property in which the third-parties have no ownership or contractual interest. Once the process is commenced, various levels of challenge and appellate mechanisms are made available. This Village grant of authority allows these "third-parties" to permanently and adversely affect landowners' development entitlements and to constantly attack these rights with the intent to deprive others of their rights. Further, there is no time limit associated with § 1.12.1. Thus, § 1.12.1 exposes landowners to an endless number of determinations and challenges, of and to, their development rights by third-parties, at any time in the future. The Village has in fact allowed third-parties to obtain determinations of how Code provisions apply to property in which they have no ownership or contractual interest.

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Specifically, the Village has allowed the Jacobs to utilize § 1.12.1 in order to obtain determinations of how Code provisions affect the Subject Property by issuing an interpretation to the Jacobs in response to their Interpretation Requests and scheduling the PZAB appeal hearing for June 30, 2014.

To pass constitutional muster under the due process clauses, the Village must have had a legitimate purpose for enacting § 1.12.1, and § 1.12.1 must provide means to accomplish that purpose which are not unreasonable, arbitrary, capricious, or oppressive. *Nationwide Mut. Fire Ins. Co.*, 753 So. at 59; *Haire v. Florida Dept. of Agriculture & Consumer Services*, 870 So. 2d 774 (Fla. 2004) (Stating that government interference with property rights pursuant to its police powers is generally subjected to the reasonable relationship test); *Proctor v. City of Coral Springs*, 396 So. 2d 771, 772 (Fla. 4th DCA 1981) (Court applied reasonable relationship test and determined that zoning ordinance which prohibited parking of commercial vehicle was unconstitutional as applied to pickup truck that had no commercial markers and was not used for commercial purposes, when definition of "commercial vehicle" was based upon the State of Florida Vehicle Tax Class Codes and descriptive classifications); *see also Department of Ins. v. Dade County Consumer Advocate's Office*, 492 So. 2d 1032, 1034 (Fla. 1986)(invalidating anti-rebate statute because there was no relationship between the statute and a legitimate state purpose in safeguarding the public health, safety or general welfare).

An ordinance which allows persons or entities to initiate and obtain multiple binding opinions from the Village, and the courts, that decide the development entitlements associated with property in which they have **no ownership or contractual interest**, does not have a relationship to a legitimate purpose in public health, safety, moral or general welfare. *Department of Ins. v. Dade County Consumer Advocate's Office*, 492 So. 2d at 1034

("Constitutional law never sanctions the granting of sovereign power to one group of citizens to be exercised against another ***unless the general welfare is served.***") (emphasis added). Before commencing this action landowners requested "[a]ll legislative history pertaining to Article I Chapter 12" of the Code. *See* March 4, 2014, Public Records Request, attached hereto as ***Exhibit "D"***. On March 11, 2014, the Village responded to Owners' request and provided them with 141 pages of legislative history. The legislative history of § 1.12.1 does not reflect that it was enacted to serve any purpose, let alone a valid public purpose. In the absence of any apparent rational relationship between § 1.12.1 and the public welfare, the Court must conclude that § 1.12.1 is an unjustified exercise of the Village's police powers. *Chicago Title Ins. Co. v. Butler*, 770 So. 2d 1210, 1217-18 (Fla. 2000) (rejecting an alleged public purpose that was not discussed in the legislative history of statutory amendments).

Because the Village's own legislative history does not reveal that § 1.12.1 has a rational relationship to a legitimate general welfare concern and the Owners' state created rights have and continue to be infringed upon by the Jacobs' initiation and the Village's continuation of proceedings pursuant to § 1.12.1, Owners have a substantial likelihood of success on Count IV, Owners' Substantive Due Process claim.

b. ***Vested Rights – Estoppel***

Count VI of the Amended Complaint seeks an injunction prohibiting the Village from commencing or continuing any legal proceedings pursuant to § 1.12.1 of the Code relating to the Subject Property because § 1.12.1 divests Owners of their vested rights in development orders associated with the Subject Property. [1] Florida common law provides that the government is estopped from diminishing a property owner's vested rights to development entitlements through

[1] In the event that the Court does not find that Owners are likely to succeed on the merits of their Substantive Due Process claim, Owners advance an alternative vested rights – estoppel theory.

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government regulation. *Monroe County v Ambrose*, 866 So. 2d 707, 710 (Fla. 3d DCA 2003) ("The theory behind vested rights is that 'a citizen is entitled to rely on the assurances and commitments of a zoning authority ***and if he does, the zoning authority is bound by its representations***'") (emphasis added). To claim a vested right under Florida law, the plaintiff must show either: (1) that it has reasonably and detrimentally relied on a government act or omission . . .; or (2) that [the government] has acted in clear display of bad faith. *Coral Springs Street Systems v. City of Sunrise*, 371 F. 3d 1320 (2004). Here, the Owners proceed under the former theory. Under Florida law, the doctrine of vested rights/estoppel may be invoked against the government where the claimants show they "(1) in good faith reliance; (2) upon some act or omission of government; (3) made such substantial change in position or have incurred such extensive obligations and expenses; (4) that it would make it highly inequitable to interfere with the acquired right." *Hollywood Beach Hotel Co. v. City of Hollywood*, 329 So. 2d 10, 15-16 (Fla. 1976)

As discussed above, Owners submitted various applications for development orders to the Village in order to construct the Equestrian Village project, from 2011-2013. The requested development orders were issued by the Village pursuant to its permitting and review process, which included an assessment of the gross floor area and height of the structures to be constructed upon the Subject Property and their compliance with the Code. *Coral Springs Street Systems*, 371 F. 3d at 1333 (Vested right to a construction permit or similar entitlements may be found where the conditions of equitable estoppel are present). In reliance on the Village's approvals and issuance of the development orders, Owners constructed various structures upon the Subject Property. *Sakolsky v. City of Coral Gables*, 151 So. 2d 433, 435-35 (Fla. 1963) (estoppel present where holder materially changed his position and incurred substantial expense

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in reliance on permit which had been intentionally and lawfully issued by municipality). The structures comprising the Equestrian Village project include but are not limited to barns, a covered arena, riding rings, restrooms, offices, manure bins, a viewing deck/seating area, and horse wash racks. Owners incurred extensive obligations and spent over two years obtaining the development orders and constructing the Equestrian Village project. *Coral Springs Street Systems*, 371 F. 3d at 1334 ("Florida courts have made it abundantly clear that when a property owner incurs a substantial investment of time or money in reasonable reliance on existing laws . . . he may acquire a vested right in a building permit."); *see also Hollywood*, 329 So 2d at 10.

Owners have vested rights to the development orders and the Equestrian Village project because Owners have constructed the structures, substantially altered the Subject Property, have invested a substantial amount of time in the Equestrian Village project, and have incurred extensive obligations as a result of the development orders associated with the Equestrian Village project. *Equity Res. Inc. v. County of Leon*, 642 So. 2d 1112, 1120 (Fla. 1st DCA 1994) (When property is zoned and planned as one project, there are vested rights in zoning for entire project without any showing that acts of reliance by landowner could be exclusively attributed to each and every part of the overall project.).

The Jacobs submitted Interpretation Requests pursuant to § 1.12.1 of the Code subsequent to the vesting of Owners' rights in the development orders. The Interpretation Requests challenge the Village's assessment of the gross floor area and height of certain structures built pursuant to the Village's previously issued development orders. Specifically, the Jacobs' Interpretation Requests involve the issuance of development orders and construction of the existing barns, viewing deck/seating area and covered arena, and state the following:

i. Request 1 alleges that the stables built on the Subject Property are structures with floor area to which an alleged 20,000 square foot limitation in § 6.10.11(d) of the Code applies; and that the stables exceed this limitation.

ii. Request 2 alleges that the viewing deck/seating area built on the Subject Property is a structure with floor area to which the alleged 20,000 square foot limitation in § 6.10.11(d) of the Code applies; and that the viewing deck/seating area exceeds this limitation.

iii. Request 3 alleges that an alleged 25 foot height limitation in § 6.5.8.C.2 of the Code applies to the Subject Property and that the covered arena exceeds this height limitation.

iv. Request 4 alleges that the covered arena built on the Subject Property is a structure with floor area to which an alleged 20,000 square foot limitation in § 6.10.11(d) of the Code applies; and that the covered arena exceeds this limitation.

The Village issued an interpretation to the Jacobs' pursuant to their Interpretation Requests even though the Interpretation Requests involve determinations that the Village had already made and that the Owners had relied upon. Consequently, the Village's issuance of the interpretation has divested Owners of their vested rights to the development orders by making the development rights contingent on the various proceedings and levels of challenges that become available once a § 1.12.1 interpretation is issued. As discussed previously, the issuance of an interpretation by the Village opens the door to a multitude of appellate proceedings. Each of which could result in a revocation of Owners' vested rights.

The Village is not permitted to approve Owners' applications and issue development orders to them, and then initiate proceedings divesting Owners of the development orders after

the Owners have relied upon them. *Town of Largo v. Imperial Homes Corp.*, 309 So. 2d 571, 573 (Fla. 2d DCA 1975) ("One party will not be permitted to invite another onto a welcome mat and then be permitted to snatch the mat away to the detriment of the party induced or permitted to stand thereon"). Owners reasonably relied upon the Village's interpretation of its Code provisions, the Village's approval of the development orders, and the Village's issuance of the development orders pursuant to its procedures. The Village is estopped from commencing subsequent Village proceedings which divest Owners of their vested rights in the development orders associated with the Equestrian Village project by making them contingent on the outcome of the various proceedings that become available under § 1.12.1. *Town of Largo*, 309 So. 2d at 573 (town enjoined from enforcing new zoning requirements where it was determined that developer had relied on town's prior approval of a rezoning when determining whether to purchase and commence development project upon property); *see also Equity Resources*, 643 So. 2d at 1112 ; *Castro v. Miami-Dade County Code Enforcement*, 967 So. 2d 230, 233 (Fla. 3d DCA 2007). Because the § 1.12.1 proceedings initiated by the Jacobs and commenced by the Village undoubtedly divest Owners of their vested rights, Owners have a substantially likelihood of success on Count VI, Owners' Vested Rights-Estoppel claim.

II. Owners Will Suffer Irreparable Harm If Their Motion is Not Granted.

A party suffers irreparable injury where the party "cannot be adequately compensated if, at some later point in time, it prevails on the merits of the case." *Glen Raven Mills, Inc. v. Ramada Int'l, Inc.*, 852 F. Supp. 1844, 1457 (M.D. Fla. 1994); *see also Goldberger v. Regency Highland Condominium Ass'n*, 383 So. 2d 1173, 1174 (Fla. 4th DCA 1980) (an injunction is proper were compensation in money cannot atone for damages).

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Here, the Village's actions violate Owners' right to enjoy the Subject Property, including its associated development entitlements, free from arbitrary and capricious governmental regulation and divest Owners of their vested rights in development orders. It is well-established law that infringement upon land is not remediable by assessment of damages at law because "every piece of land in the world has a peculiar value." *Daniel*, 143 So. 2d at 538. Consequently, the Owners will suffer irreparable harm absent the issuance of a temporary injunction.

Moreover, given, the substantial likelihood that the Owners will prevail on their Substantive Due Process and Vested Rights/Estoppel claims, and given that Florida law does not lightly treat unwarranted incursions to interests in land, it would not serve justice if the Owners have to wait for a final adjudication in order to obtain relief from the Village's wrongful actions. This is particularly true because the Village has scheduled a PZAB hearing for June 30, 2014. Once the PZAB hearing takes place, any interested party to the PZAB hearing may appeal PZAB's decision to the Circuit Court in its appellate capacity via first tier certiorari review and may then appeal the Circuit Court's decision to the District Court through second tier certiorari review. Moreover, if PZAB or the Circuit Court render a decision adverse to the Owners they must appeal that decision within 30 days or will be barred from doing so do to the jurisdictional deadlines for filing petitions for writ of certiorari. Consequently, the PZAB hearing must be enjoined in order to avoid subjecting the Owners' property rights to multiple levels of review that must be appealed very quickly and the possibility that a decision adverse to Owners will be made at one of the various proceedings that become available under § 1.12.1. *Autozone Stores,Inc. v. Northeast Plaza Venture, LLC*, 934 So. 2d 670, 673 n.1 (Fla. 2d DCA 2006) (An injunction is the usual remedy in all litigation relating to rights in real estate, including against

encroachments, nuisances, continues or repeated trespasses, and interference with easements); *Velickovich v. Ricci,* 391 So.2d 258, 259 (Fla. 4th DCA 1980) (Because of the unique nature of each piece of real property, violations of restrictive covenants cannot be easily remedied by money damages).

Further, the burden caused by the commencement of the PZAB appeal is greater on the Owners than the burden on the Village and the Jacobs because it is easier to commence a PZAB appeal hearing pursuant § 1.12.1 in the future, than close the legal doors opened by the initiation of a PZAB appeal. *Cordis Corp. v Prooslin*, 482 So. 2d 486, 491 (Fla. 3d DCA 1986) (The trial court must use a balance-approach in ruling on a motion for temporary injunction, balancing the beneficial results against the detrimental results and threatened hardships associated with granting or denying the relief). Further, if the PZAB does issue a decision adverse to Owners, they will be required to file a first tier certiorari petition within 30 days of the rendition of the PZAB's decision to comply with the Circuit Court's jurisdiction. If the Circuit Court issues a decision adverse to Owners, they will be required to comply with the same short time-frame to file a second tier certiorari petition with the District Court. Moreover, the status quo is maintained by enjoining all § 1.12.1 proceedings directed toward the Subject Property, including the PZAB appeal hearing, because the Owners' interest cannot be further infringed upon in the absence of further 1.12.1 proceedings. *City of Sunny Isles Beach v. Temple N'Nai Zion, Inc.*, 43 So. 3d 904, 905-6 (Fla. 3d DCA 2010)(The very purpose of a temporary injunction is to preserve the status quo to prevent irreparable harm from occurring before the dispute is resolved).

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III. Owners Have No Adequate Remedy at Law.

In determining whether a temporary injunction should issue, the true test of an alleged adequate remedy at law is whether a monetary judgment could be obtained in a proceeding at law. *Oxford Int'l Bank and Trust, Ltd. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 374 So. 2d 54 (Fla. 3d DCA 1979). In the present case, Owners' damages (and potential damages) are not susceptible to monetary calculation because the harm relates to the Subject Property and Owners' property rights. As set forth above, infringement upon land is not remediable by assessment of damages at law because "every piece of land has a peculiar value." *Daniel,* 143 So. 2d at 538. Indeed, other than the injunction requested herein, Owners have no alternative method to prevent continuous and repeated use of the ordinance and impingement of their property rights.

IV. Granting the Requested Relief Will Promote the Public Interest.

In considering whether an injunction will adversely affect the public interest, courts look at the effect of the injunction on non-parties. *See Dragomirecky v. Town of Ponce Inlet*, 882 So. 2d 495, 497 (Fla. 5th DCA 2004). Here, no injury to the public will result if the Court grants the Motion. To the contrary, there is a public interest in protecting landowners' interest in land against incursions not authorized by law.

CONCLUSION

Because the Village's commencement and continuance of § 1.12.1 proceedings deprive Owners of their right to substantive due process under both the Federal and Florida Constitutions (Count IV) and also divest owners of their vested rights to development orders (Count VI) causing them irreparable harm for which there is no adequate remedy at law, the Court should grant Owners' Motion for Temporary Injunction.

WHEREFORE, Plaintiffs, Polo Field One, LLC, Stadium North, LLC, Stadium South, LLC, Far Niente Stables II, LLC, and Equestrian Sport Productions, LLC, respectfully request that the Court enter a temporary injunction, preventing the Village from commencing or continuing any legal proceedings pursuant to § 1.12.1 of the Code relating to the Subject Property that are requested by persons or entities who have no property or contractual interest in the Subject Property, including a temporary injunction prohibiting the Village from commencing the PZAB appeal hearing (currently scheduled for June 30, 2014), or in the alternative, enter a temporary injunction, preventing the Village from commencing or allowing third-parties, including the Jacobs, to commence any proceeding, including interpretation requests and appeals from interpretation requests, which have the effect of divesting Owners' vested rights in the development orders, and any other relief which the Court deems just, proper and equitable.

Respectfully submitted,

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(*Certificate of Service follows*)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via ***Electronic Mail*** to the attached service list this 1 day of May, 2014.

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23N1488

Via Electronic Mail

December 6, 2013

Laurie Stillwell Cohen, Esq.
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Re: Administrative Appeals

Dear Laurie:

This correspondence is transmitted to you in response to you November 7th letter regarding the four (4) administrative appeals that have been pending before the Village of Wellington for almost two years. These appeals were properly and timely filed with the Village Clerk and Village Attorney and were accepted by the Village. At no time during this time has the Village advised that the appeals were not timely or appropriately filed, or that a form needed to be filed to perfect their status, even though we specifically asked at the time of filing if any forms or fees were needed. A copy of the appeals are attached to this correspondence.

The interpretations that were appealed were already provided and the Village has stood by those interpretations for the last two years during the permitting and approval process of Equestrian Village. At the October 22, 2013 hearing, I raised the fact that the Village (the Developer) was again relying on the exact interpretations that had been appealed and that no final decision had been provided as to the propriety of the Village's position because the Village had failed to set them for hearing.

Your correspondence contemplates a process when an interpretation has not been provided. This is not the case under the current circumstances. The Village has repeatedly provided its interpretation in numerous public forums, and accordingly, that is the interpretation that has been appealed, and that is the process



that we were advised by the prior Village Attorney and Staff to follow. The process you are requesting us to follow is only available when an interpretation has not been given.

Nonetheless, you have specifically advised that you are in no way challenging our right to the appeals that we have filed or trying to prohibit our appellate rights from moving forward. You have further advised that the Village will not change the previous determinations that it has rendered on numerous occasions. Accordingly, while preserving our arguments, and without waiving our right to challenge the requirement to file under these circumstances (through the filing of an action for declaratory relief), I am filing the attached forms under protests and request that this matter be immediately addressed so that we can move forward in this process.

I am also forwarding a check in the amount of $2000.00 to process these appeals.

Thank you for your anticipated attention to this matter.

Sincerely,

Amy E. Huber
For the firm

Enc.

cc: Claudio Riedi, Esq.
Mr. Paul Schofield
Mr. Tim Stillings

WELLINGTON

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Planning, Zoning Division
12300 Forest Hill Blvd . Wellington, FL 33414 (561) 791-4000 pzapplications@wellingtonfl.gov

PLANNING & ZONING INTERPRETATION REQUEST

I. PETITIONER OR AGENT INFORMATION

Petitioner(s) if other than owner(s). Charles and Kimberly Jacobs & Solar Sportsystems

Address: see attached City: _____ ST _____ Zip _____

Phone: _____ FAX _____

Agent:* Shubin & Bass, P.A. John Shubin, Jeff Bass, Amy Hub

Company Name: _____

Address: 46 SW 1st St. 3rd Fl City Miami ST FL Zip 33136

Phone: 305·381·6060 FAX: 305·381·9457

*All correspondence will be sent to agent unless otherwise requested.

II. INTERPRETATION REQUEST

A. INTERPRETATION REQUEST (State the Code and Section thereof for which the interpretation is requested Be specific with respect to the nature of your interpretation request)

Please see attached.

B. Project Name (if applicable)

Equestrian Village

C. Project Address (if applicable)

_____

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12300 Forest Hill Blvd., Wellington, FL 33414 (561) 791-4000 pzapplications@wellingtonfl.gov

PLANNING & ZONING INTERPRETATION REQUEST

I. PETITIONER OR AGENT INFORMATION

Petitioner(s) if other than owner(s): Charlie & Kim Jacobs / Solar Sportsystems, Inc.
Address: 2730 Polo Island Dr, A-104 / 13307 Polo Club Rd, C-104 & C-105 City: Wellington ST FL Zip: _____
Phone: _____ FAX: _____

Agent: * John Shubin, Jeff Bass, and Amy Huber
Company Name: Shubin & Bass, P.A.
Address: 46 SW 1st St, 3rd Floor City: Miami ST FL Zip 33130
Phone: 305.381.6000 FAX: 305.381.9457

*All correspondence will be sent to agent unless otherwise requested.

II. INTERPRETATION REQUEST

A. INTERPRETATION REQUEST (State the Code and Section thereof for which the interpretation is requested. Be specific with respect to the nature of your interpretation request).

Article 10, Sec. 6.10.11(a)

The covered commercial equestrian arena is 80,400 sq. ft. This is in excess (4x) of the maximum permitted commercial use permitted in the EOZD pursuant to Article 10, Sec. 6.10.11(a).

See attached appeal dated January 30, 2012.

B. Project Name (if applicable):

Equestrian Village

C. Project Address (if applicable)

LAW OFFICES
SHUBIN & BASS
PROFESSIONAL ASSOCIATION

Via Electronic Mail
and U.S. Mail

January 31, 2012

Ms. Awilda Rodriguez
City Clerk
City of Wellington
12300 Forest Hill Boulevard
Wellington, Florida 33414

Re: Appeal of Administrative Interpretation Re: Equestrian Arena

Dear Ms. Rodriguez:

This appeal is filed on behalf of Charles and Kimberly Jacobs and Solar Sportsystems, Inc. (collectively, the "Appellants"), the owners of real property located in the City of Wellington at 2730 Polo Island Drive, A-104, Wellington, Florida and 13307 Polo Club Road, C-104 and C-105, Wellington, Florida, respectively. The Appellants are aggrieved and adversely affected by an administrative interpretation, rendered by the City, related to the calculation of Floor Area for an Equestrian Arena that is approximately 80,400 square feet in size (the "Subject Interpretation"). (The Equestrian Arena is described in detail in Exhibit A (attached)). The Subject Interpretation is erroneous and must be reversed.

Please consider this correspondence as the Appellants' appeal of the Subject Interpretation and corresponding request for a public hearing regarding same. If there are forms and/or fees associated with this Administrative Appeal, kindly identify them for us at your earliest convenience, and we will remit them forthwith.

I. The Equestrian Arena is a "Structure" with 80,400 square feet of Floor Area

The City's Land Development Regulations, Florida law, and common sense require the reversal of the Subject Interpretation. The City's Code defines "Floor Area" to mean "the ratio of the gross floor area of all structures on a lot to the lot area, excluding vertical core circulation areas for **multi**story structures. "Art. 3, Ch. 2, City Code. (Emphasis supplied). The City's Code defines "Structure" as "that which is three

(3) feet or more in height, built or constructed or erected or tied down having a fixed location on the ground or attached to something having a permanent location on the ground, such as buildings, homes, mobile homes, towers, walls, fences. billboards, shore protection devices, and poster panels." *Id.*

Legally and grammatically, it is clear that the Equestrian Arena is a "structure" as that term is defined by the City Code and commonly understood. Because the Equestrian Arena is a *single-story* structure – no exception exists for the calculation of its floor area because the only enumerated definitional exception is limited to **multi**story structure which this is not. Under the doctrine of *expressio unius est exclusion alterius*, the Code's express mention of one exclusion directly implies that none other exists. By all measurements and all definitions then, the Equestrian Arena is – under the City's Code – a "structure" comprising 80,400 square feet of Floor Area. The City staff's contrary administrative interpretation is therefore clearly erroneous and must be reversed.

II. The Equestrian Arena is Prohibited by the EOZD District Regulations

The Equestrian Arena is located within the Equestrian Overlay Zoning District ("EOZD"). *See* Exhibit A. The operative district regulations for the EOZD prohibit the development of any commercial structure in excess of 20,000 square feet of gross floor area. *See* Article 10, Sec. 6.10.11(d), City Code. Because the Equestrian Arena exponentially exceeds the ***maximum* permitted** commercial development intensity within the EOZD, it is prohibited therein. As such, it was clear and reversible error for the City's administration to approve its development within the EOZD District.

The Appellants reserve the right to supplement this appeal with additional legal authority and arguments if and when the City responds to their Public Records Act requests.

Sincerely yours,

John K. Shubin, Esq.
Jeffrey S. Bass, Esq.
Amy E. Huber, Esq.
For the firm

cc: Jeff Kurtz, Esq., City Attorney
Mr. David Flinchum, Planning & Zoning Manager

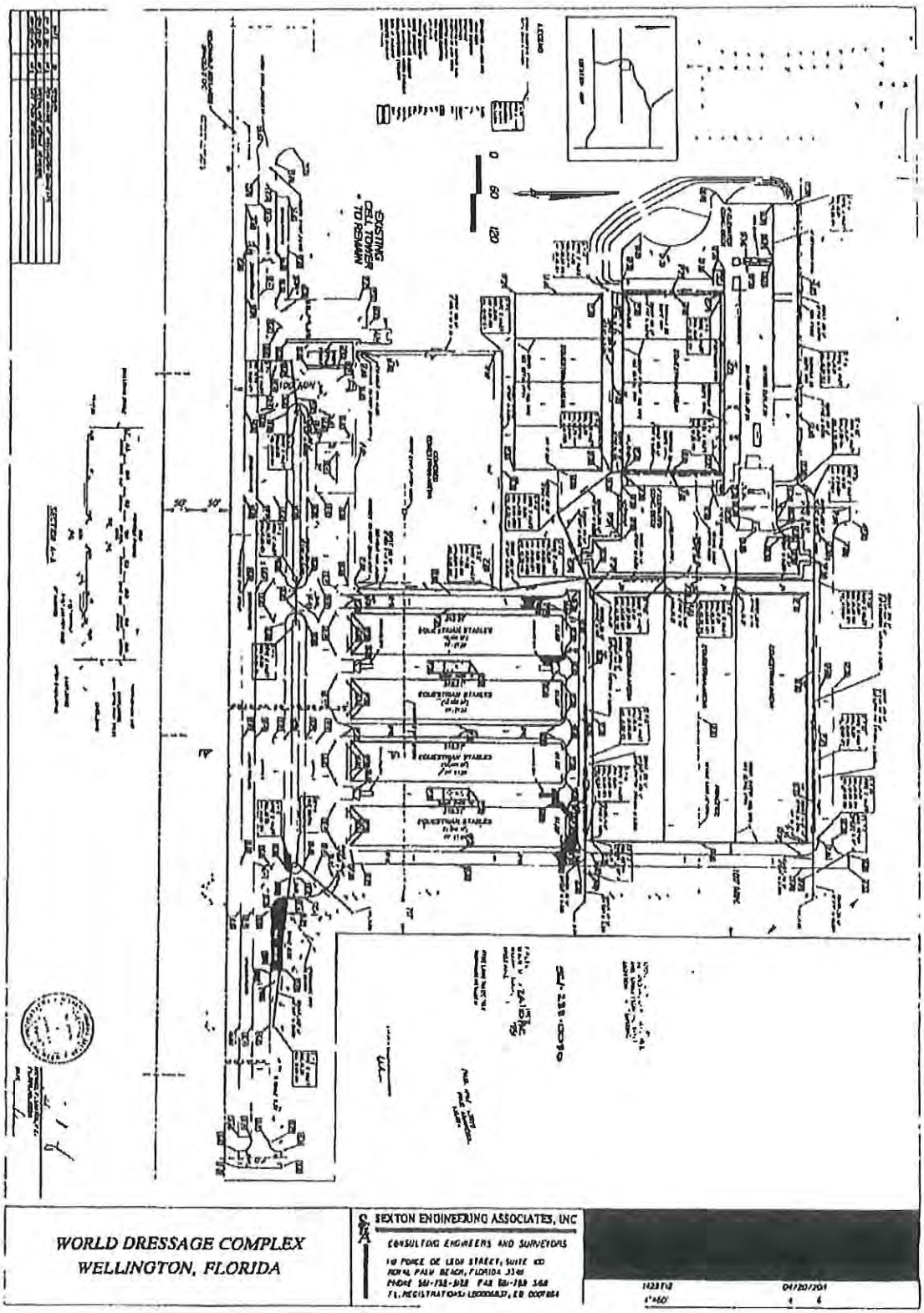

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SEXTON ENGINEERING ASSOCIATES, INC
CONSULTING ENGINEERS AND SURVEYORS

EXHIBIT "A"

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PLANNING & ZONING INTERPRETATION REQUEST

I. PETITIONER OR AGENT INFORMATION

Petitioner(s) if other than owner(s): Charlie & Kim Jacobs / Solar Sportsystems, Inc.,
Address: 13307 Polo Club Rd, 2730 Polo Island Dr. / 4404 City: Wellington ST: FL Zip: _____

Phone: _____ FAX: _____

Agent: * John Shubin, Jeff Bass, Amy Huber

Company Name: Shubin & Bass, P.A.

Address: 46 SW 1st St, 3rd Fl City: Miami ST: FL Zip: 33130

Phone: 305.381.6060 FAX: 305.381.9457

*All correspondence will be sent to agent unless otherwise requested.

II. INTERPRETATION REQUEST

A. INTERPRETATION REQUEST (State the Code and Section thereof for which the interpretation is requested. Be specific with respect to the nature of your interpretation request):

Article 10, Sec. 6.10.11(d)

The commercial arena viewing deck/vendor/seating area is in excess of 29000 sq. ft. and exceeds the maximum permitted commercial use allowed in the EOZD pursuant to Article 10, Sec. 6.10.11(d.)

See attached appeal.

B. Project Name (if applicable):

Equestrian Village

C. Project Address (if applicable)

LAW OFFICES
SHUBIN & BASS
PROFESSIONAL ASSOCIATION

Via Electronic Mail
and U.S. Mail

January 31, 2012

Ms. Awilda Rodriguez
City Clerk
City of Wellington
12300 Forest Hill Boulevard
Wellington, Florida 33414

Re: Appeal of Administrative Interpretation Re: Equestrian Arena Seating

Dear Ms. Rodriguez:

This correspondence is filed on behalf of Charles and Kimberly Jacobs and Solar Sportsystems, Inc. (collectively, the "Appellants"), the owners of real property located in the City of Wellington at 2730 Polo Island Drive, A-104, Wellington, Florida and 13307 Polo Club Road, C-104 and C-105, Wellington, Florida, respectively, and is intended to supplement the Appellants' previous appeal filed today and attached hereto as Exhibit "A." The Appellants also appeal the administrative interpretation related to the calculation of Floor Area for the Equestrian Arena Seating as depicted in Exhibit "B."("Seating Interpretation").

Please consider this correspondence as the Appellants' appeal of the Seating Interpretation and corresponding request for a public hearing regarding same. If there are forms and/or fees associated with this Administrative Appeal, kindly identify them for us at your earliest convenience, and we will remit them forthwith.

1. **The Equestrian Arena Seating is a "Structure" with Floor Area**

The City's Land Development Regulations, Florida law, and common sense require the reversal of the Subject Interpretation. The City's Code defines "Floor Area" to mean "the ratio of the gross floor area of all structures on a lot to the lot area, excluding vertical core circulation areas for multistory structures. "Art. 3, Ch. 2, City Code. (Emphasis supplied). The City's Code defines "Structure" as "that which is three (3) feet or more in height, built or constructed or erected or tied down having a fixed location on the ground or attached to something having a permanent location on the ground, such as buildings, homes, mobile homes, towers, walls, fences, billboards, shore protection devices, and poster panels." *Id.*

Legally and grammatically, it is clear that the Equestrian Arena Seating is a "structure" as that term is defined by the City Code and commonly understood. By all measurements and all definitions, the Equestrian Arena Seating is – under the City's Code – a "structure" comprising of square feet of Floor Area. The City staff's contrary administrative interpretation is therefore clearly erroneous and must be reversed.

II. The Equestrian Arena Seating is Prohibited by the EOZD District Regulations

The Equestrian Arena is located within the Equestrian Overlay Zoning District ("EOZD"). *See* Exhibit A. The operative district regulations for the EOZD prohibit the development of any commercial structure in excess of 20,000 square feet of gross floor area. *See* Article 10, Sec. 6.10.11(d), City Code. Because the Equestrian Arena exponentially exceeds the ***maximum* permitted** commercial development intensity within the EOZD, it is prohibited therein. As such, it was clear and reversible error for the City's administration to approve its development within the EOZD District.

The Appellants reserve the right to supplement this appeal with additional legal authority and arguments if and when the City responds to their Public Records Act requests.

Sincerely yours,



John K. Shubin, Esq.
Jeffrey S. Bass, Esq.
Amy E. Huber, Esq.
For the firm

cc: Jeff Kurtz, Esq., City Attorney
Mr. David Flinchum, Planning & Zoning Manager.

LAW OFFICES
SHUBIN & BASS
PROFESSIONAL ASSOCIATION

Via Electronic Mail
and U.S. Mail

January 31, 2012

Ms. Awilda Rodriguez
City Clerk
City of Wellington
12300 Forest Hill Boulevard
Wellington, Florida 33414

Re: Appeal of Administrative Interpretation Re: Equestrian Arena

Dear Ms. Rodriguez:

This appeal is filed on behalf of Charles and Kimberly Jacobs and Solar Sportsystems, Inc. (collectively, the "Appellants"), the owners of real property located in the City of Wellington at 2730 Polo Island Drive, A-104, Wellington, Florida and 13307 Polo Club Road, C-104 and C-105, Wellington, Florida, respectively. The Appellants are aggrieved and adversely affected by an administrative interpretation, rendered by the City, related to the calculation of Floor Area for an Equestrian Arena that is approximately 80,400 square feet in size (the "Subject Interpretation"). (The Equestrian Arena is described in detail in Exhibit A (attached)). The Subject Interpretation is erroneous and must be reversed.

Please consider this correspondence as the Appellants' appeal of the Subject Interpretation and corresponding request for a public hearing regarding same. If there are forms and/or fees associated with this Administrative Appeal, kindly identify them for us at your earliest convenience, and we will remit them forthwith.

I. The Equestrian Arena is a "Structure" with 80,400 square feet of Floor Area

The City's Land Development Regulations, Florida law, and common sense require the reversal of the Subject Interpretation. The City's Code defines "Floor Area" to mean "the ratio of the gross floor area of all structures on a lot to the lot area, excluding vertical core circulation areas for multistory structures. "Art. 3, Ch. 2, City Code. (Emphasis supplied). The City's Code defines "Structure" as "that which is three

46 S.W. 1st Street, 3rd Floor, Miami, FL 33130 Ph: 305-381-6060 Fx: 305-381-9457 www.shubinbass.com

EXHIBIT "A"

(3) feet or more in height, built or constructed or erected or tied down having a fixed location on the ground or attached to something having a permanent location on the ground, such as buildings, homes, mobile homes, towers, walls, fences. billboards, shore protection devices, and poster panels." *Id.*

Legally and grammatically, it is clear that the Equestrian Arena is a "structure" as that term is defined by the City Code and commonly understood. Because the Equestrian Arena is a ***single-story*** structure – no exception exists for the calculation of its floor area because the only enumerated definitional exception is limited to multistory structure which this is not. Under the doctrine of ***expressio unius est exclusion alterius***, the Code's express mention of one exclusion directly implies that none other exists. By all measurements and all definitions then, the Equestrian Arena is – under the City's Code – a "structure" comprising 80,400 square feet of Floor Area. The City staff's contrary administrative interpretation is therefore clearly erroneous and must be reversed.

II. The Equestrian Arena is Prohibited by the EOZD District Regulations

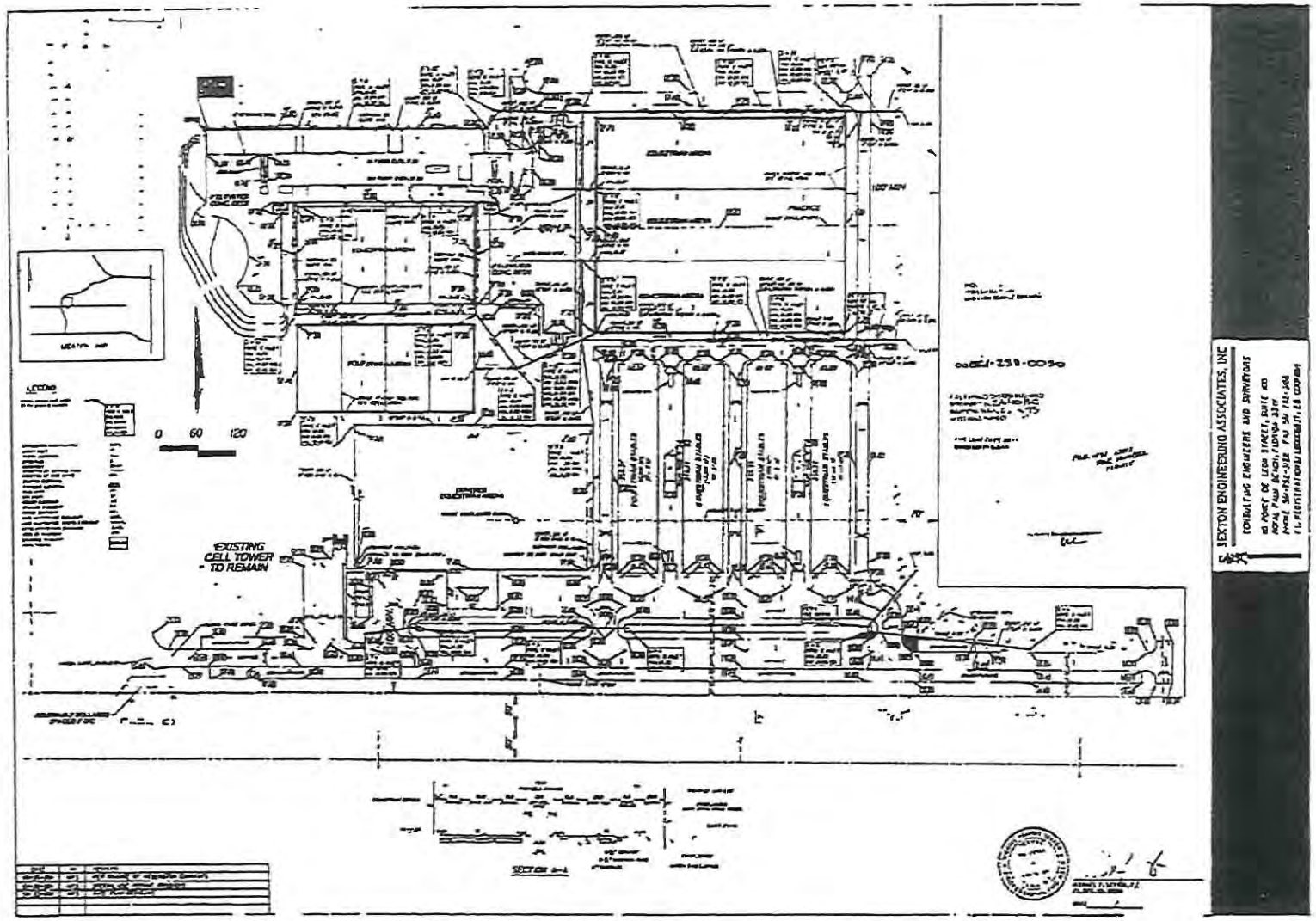
The Equestrian Arena is located within the Equestrian Overlay Zoning District ("EOZD"). *See* Exhibit A. The operative district regulations for the EOZD prohibit the development of any commercial structure in excess of 20,000 square feet of gross floor area. *See* Article 10, Sec. 6.10.11(d), City Code. Because the Equestrian Arena exponentially exceeds the ***maximum*** permitted commercial development intensity within the EOZD, it is prohibited therein. As such, it was clear and reversible error for the City's administration to approve its development within the EOZD District.

The Appellants reserve the right to supplement this appeal with additional legal authority and arguments if and when the City responds to their Public Records Act requests.

Sincerely yours,

John K. Shubin, Esq.
Jeffrey S. Bass, Esq.
Amy E. Huber, Esq.
For the firm

cc: Jeff Kurtz, Esq., City Attorney
Mr. David Flinchum, Planning & Zoning Manager


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EXHIBIT "B"

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PLANNING & ZONING INTERPRETATION REQUEST

I. PETITIONER OR AGENT INFORMATION

Petitioner(s) if other than owner(s) Charlie & Kim Jacobs / Solar Sportsystems, Inc
Address: 2730 Polo Island Dr, A104 / 13201 Polo Club Rd, C104/C105 City: Wellington ST FL Zip: _____
Phone: _____ FAX _____

Agent: * John Shubin, Jeff Bass, Amy Huber
Company Name. Shubin & Bass, P.A.
Address: 46 SW 1st St, 3rd FL City: Miami ST FL Zip: 33130
Phone 305.381.6000 FAX 305.381.9457

*All correspondence will be sent to agent unless otherwise requested

II. INTERPRETATION REQUEST

A. INTERPRETATION REQUEST (State the Code and Section thereof for which the interpretation is requested Be specific with respect to the nature of your interpretation request)

Section 6.5.B.C.2.

The Commercial Covered Equestrian Arena is approximately 45 feet in height. The maximum permitted height for Commercial Recreation properties is 25 feet. The Commercial Covered Equestrian Arena violates Section 6.5.B.C.2.

See attached appeal.

B. Project Name (if applicable):

Equestrian Village

C. Project Address (if applicable)

LAW OFFICES
SHUBIN & BASS
PROFESSIONAL ASSOCIATION

Via Hand Delivery

February 1, 2012

Ms. Awilda Rodriguez
City Clerk
City of Wellington
12300 Forest Hill Boulevard
Wellington, Florida 33414

Re: Appeal of Administrative Interpretation Re: Height of Equestrian Arena

Dear Ms. Rodriguez:

This correspondence is filed on behalf of Charles and Kimberly Jacobs and Solar Sportsystems, Inc. (collectively, the "Appellants"), the owners of real property located in the City of Wellington at 2730 Polo Island Drive, A-104, Wellington, Florida and 13307 Polo Club Road, C-104 and C-105, Wellington, Florida, respectively, and is intended to supplement the Appellants' two previous appeals filed yesterday and attached hereto as composite Exhibit "A." The Appellants also appeal the administrative interpretation related to the height of the Equestrian Arena located at Equestrian Village. ("Height Interpretation").

Please consider this correspondence as the Appellants' appeal of the Height Interpretation and corresponding request for a public hearing regarding same. If there are forms and/or fees associated with this Administrative Appeal, kindly identify them for us at your earliest convenience, and we will remit them forthwith.

I. Maximum Building Height

The City's Land Development Regulations, Florida law, and common sense require the reversal of the Subject Interpretation. The City's Code provides for the **maximum building height** of all structures in Section 6.5.1 and 6.5.8 of the City Code. Art. 6, Ch. 5, City Code. (Emphasis supplied). Section 6.5.8.C.2 of the City's Code requires that "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.**" (emphasis supplied.) The Equestrian Village Property is designated Commercial Recreation with a maximum height limitation of twenty-five feet.

II. The Equestrian Arena is Prohibited by the Maximum Height Regulations for Commercial Recreation Properties

The Equestrian Arena is located within the Equestrian Overlay Zoning District ("EOZD") and has a Comprehensive Land Use Plan category of Commercial Recreation. The controlling regulations for CR designated properties prohibits properties in excess of 25 feet. Because the Equestrian Arena exponentially exceeds the ***maximum*** **permitted** height, it is prohibited therein. As such, it was clear and reversible error for the City's administration to approve the height of the arena in excess of 25 feet.

The Appellants reserve the right to supplement this appeal with additional legal authority and arguments if and when the City responds to their Public Records Act requests.

Sincerely yours,

John K. Shubin, Esq.
Jeffrey S. Bass, Esq.
Amy E. Huber, Esq.
For the firm

cc: Jeff Kurtz, Esq., City Attorney
Mr. David Flinchum, Planning & Zoning Manager

LAW OFFICES
SHUBIN & BASS
PROFESSIONAL ASSOCIATION

Via Electronic Mail
and U.S. Mail

January 31, 2012

Ms. Awilda Rodriguez
City Clerk
City of Wellington
12300 Forest Hill Boulevard
Wellington, Florida 33414

Re: Appeal of Administrative Interpretation Re: Equestrian Arena

Dear Ms. Rodriguez:

This appeal is filed on behalf of Charles and Kimberly Jacobs and Solar Sportsystems, Inc. (collectively, the "Appellants"), the owners of real property located in the City of Wellington at 2730 Polo Island Drive, A-104, Wellington, Florida and 13307 Polo Club Road, C-104 and C-105, Wellington, Florida, respectively. The Appellants are aggrieved and adversely affected by an administrative interpretation, rendered by the City, related to the calculation of Floor Area for an Equestrian Arena that is approximately 80,400 square feet in size (the "Subject Interpretation"). (The Equestrian Arena is described in detail in Exhibit A (attached)). The Subject Interpretation is erroneous and must be reversed.

Please consider this correspondence as the Appellants' appeal of the Subject Interpretation and corresponding request for a public hearing regarding same. If there are forms and/or fees associated with this Administrative Appeal, kindly identify them for us at your earliest convenience, and we will remit them forthwith.

I. The Equestrian Arena is a "Structure" with 80,400 square feet of Floor Area

The City's Land Development Regulations, Florida law, and common sense require the reversal of the Subject Interpretation. The City's Code defines "Floor Area" to mean "the ratio of the gross floor area of all structures on a lot to the lot area, excluding vertical core circulation areas for multistory structures. "Art. 3, Ch. 2, City Code. (Emphasis supplied). The City's Code defines "Structure" as "that which is three

46 S.W. 1st Street, 3rd Floor, Miami, FL 33130 Ph: 305-381-6060 Fx: 305-381-9457 www.shubinbass.com

COMPOSITE
EXHIBIT "A"

(3) feet or more in height, built or constructed or erected or tied down having a fixed location on the ground or attached to something having a permanent location on the ground, such as buildings, homes, mobile homes, towers, walls, fences. billboards, shore protection devices, and poster panels." *Id.*

Legally and grammatically, it is clear that the Equestrian Arena is a "structure" as that term is defined by the City Code and commonly understood. Because the Equestrian Arena is a *single-story* structure – no exception exists for the calculation of its floor area because the only enumerated definitional exception is limited to multistory structure which this is not. Under the doctrine of *expressio unius est exclusion alterius,* the Code's express mention of one exclusion directly implies that none other exists. By all measurements and all definitions then, the Equestrian Arena is – under the City's Code – a "structure" comprising 80,400 square feet of Floor Area. The City staff's contrary administrative interpretation is therefore clearly erroneous and must be reversed.

II. The Equestrian Arena is Prohibited by the EOZD District Regulations

The Equestrian Arena is located within the Equestrian Overlay Zoning District ("EOZD"). *See* Exhibit A. The operative district regulations for the EOZD prohibit the development of any commercial structure in excess of 20,000 square feet of gross floor area. *See* Article 10, Sec. 6.10.11(d), City Code. Because the Equestrian Arena exponentially exceeds the ***maximum*** **permitted** commercial development intensity within the EOZD, it is prohibited therein. As such, it was clear and reversible error for the City's administration to approve its development within the EOZD District.

The Appellants reserve the right to supplement this appeal with additional legal authority and arguments if and when the City responds to their Public Records Act requests.

Sincerely yours,

John K. Shubin, Esq.
Jeffrey S. Bass, Esq.
Amy E. Huber, Esq.
For the firm

cc: Jeff Kurtz, Esq., City Attorney
Mr. David Flinchum, Planning & Zoning Manager

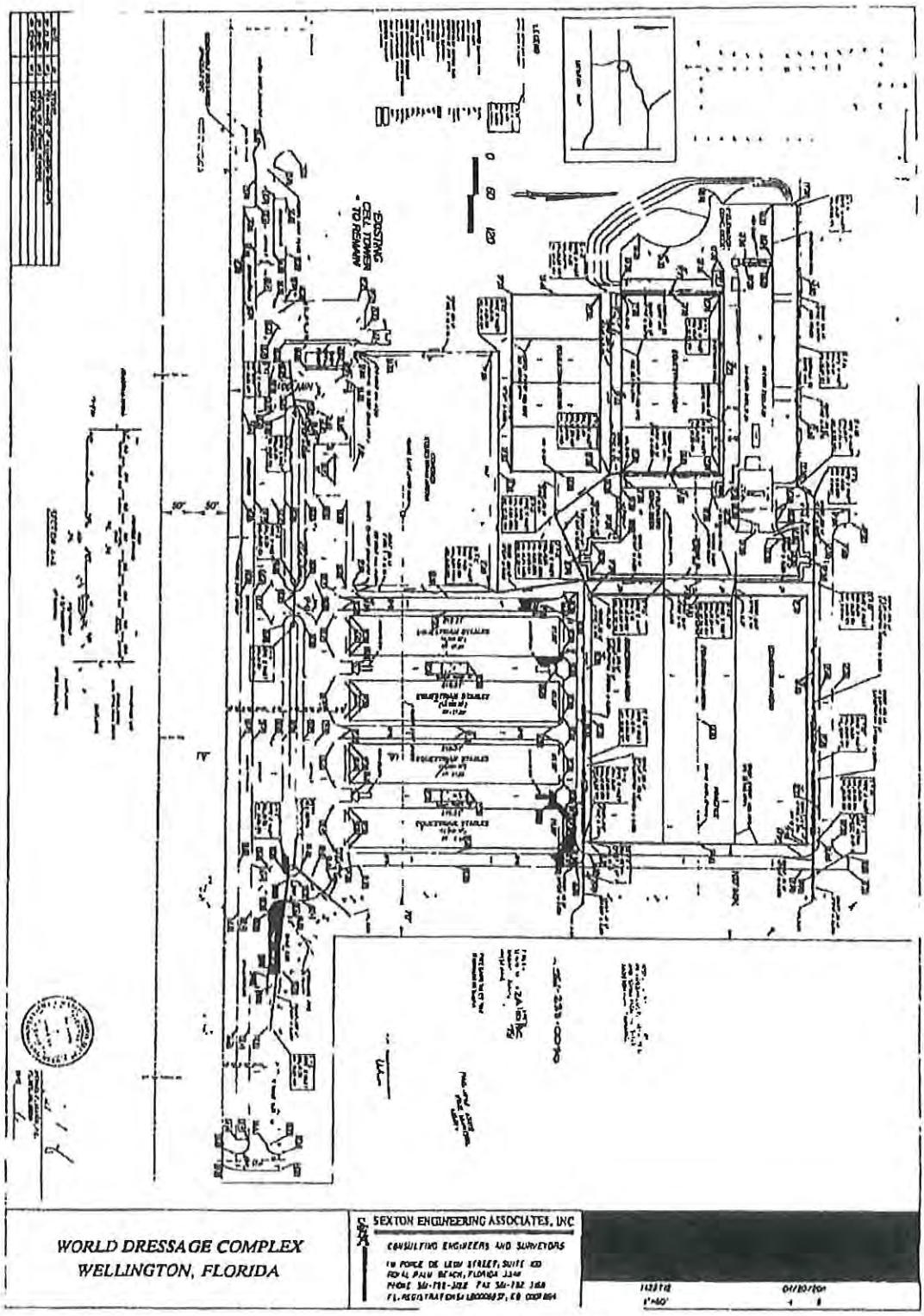

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CONSULTING ENGINEERS AND SURVEYORS

EXHIBIT "A"

LAW OFFICES
SHUBIN & BASS
PROFESSIONAL ASSOCIATION

Via Electronic Mail
and U.S. Mail

January 31, 2012

Ms. Awilda Rodriguez
City Clerk
City of Wellington
12300 Forest Hill Boulevard
Wellington, Florida 33414

Re: Appeal of Administrative Interpretation Re: Equestrian Arena Seating

Dear Ms. Rodriguez:

This correspondence is filed on behalf of Charles and Kimberly Jacobs and Solar Sportsystems, Inc. (collectively, the "Appellants"), the owners of real property located in the City of Wellington at 2730 Polo Island Drive, A-104, Wellington, Florida and 13307 Polo Club Road, C-104 and C-105, Wellington, Florida, respectively, and is intended to supplement the Appellants' previous appeal filed today and attached hereto as Exhibit "A." The Appellants also appeal the administrative interpretation related to the calculation of Floor Area for the Equestrian Arena Seating as depicted in Exhibit "B."("Seating Interpretation").

Please consider this correspondence as the Appellants' appeal of the Seating Interpretation and corresponding request for a public hearing regarding same. If there are forms and/or fees associated with this Administrative Appeal, kindly identify them for us at your earliest convenience, and we will remit them forthwith.

1. **The Equestrian Arena Seating is a "Structure" with Floor Area**

The City's Land Development Regulations, Florida law, and common sense require the reversal of the Subject Interpretation. The City's Code defines "Floor Area" to mean "the ratio of the gross floor area of all structures on a lot to the lot area, excluding vertical core circulation areas for multistory structures. "Art. 3, Ch. 2, City Code. (Emphasis supplied). The City's Code defines "Structure" as "that which is three (3) feet or more in height, built or constructed or erected or tied down having a fixed location on the ground or attached to something having a permanent location on the ground, such as buildings, homes, mobile homes, towers, walls, fences, billboards, shore protection devices, and poster panels." *Id.*

46 S.W. 1st Street, 3rd Floor, Miami, FL 33130 Ph: 305-381-6060 Fx: 305-381-9457 www.shubinbass.com

Legally and grammatically, it is clear that the Equestrian Arena Seating is a "structure" as that term is defined by the City Code and commonly understood. By all measurements and all definitions, the Equestrian Arena Seating is – under the City's Code – a "structure" comprising of square feet of Floor Area. The City staff's contrary administrative interpretation is therefore clearly erroneous and must be reversed.

II. The Equestrian Arena Seating is Prohibited by the EOZD District Regulations

The Equestrian Arena is located within the Equestrian Overlay Zoning District ("EOZD"). *See* Exhibit A. The operative district regulations for the EOZD prohibit the development of any commercial structure in excess of 20,000 square feet of gross floor area. *See* Article 10, Sec. 6.10.11(d), City Code. Because the Equestrian Arena exponentially exceeds the ***maximum*** **permitted** commercial development intensity within the EOZD, it is prohibited therein. As such, it was clear and reversible error for the City's administration to approve its development within the EOZD District.

The Appellants reserve the right to supplement this appeal with additional legal authority and arguments if and when the City responds to their Public Records Act requests.

Sincerely yours,

John K. Shubin, Esq.
Jeffrey S. Bass, Esq.
Amy E. Huber, Esq.
For the firm

cc: Jeff Kurtz, Esq., City Attorney
Mr. David Flinchum, Planning & Zoning Manager

LAW OFFICES
SHUBIN & BASS
PROFESSIONAL ASSOCIATION

Via Electronic Mail
and U.S. Mail

January 31, 2012

Ms. Awilda Rodriguez
City Clerk
City of Wellington
12300 Forest Hill Boulevard
Wellington, Florida 33414

Re: Appeal of Administrative Interpretation Re: Equestrian Arena

Dear Ms. Rodriguez:

This appeal is filed on behalf of Charles and Kimberly Jacobs and Solar Sportsystems, Inc. (collectively, the "Appellants"), the owners of real property located in the City of Wellington at 2730 Polo Island Drive, A-104, Wellington, Florida and 13307 Polo Club Road, C-104 and C-105, Wellington, Florida, respectively. The Appellants are aggrieved and adversely affected by an administrative interpretation, rendered by the City, related to the calculation of Floor Area for an Equestrian Arena that is approximately 80,400 square feet in size (the "Subject Interpretation"). (The Equestrian Arena is described in detail in Exhibit A (attached)). The Subject Interpretation is erroneous and must be reversed.

Please consider this correspondence as the Appellants' appeal of the Subject Interpretation and corresponding request for a public hearing regarding same. If there are forms and/or fees associated with this Administrative Appeal, kindly identify them for us at your earliest convenience, and we will remit them forthwith.

I. The Equestrian Arena is a "Structure" with 80,400 square feet of Floor Area

The City's Land Development Regulations, Florida law, and common sense require the reversal of the Subject Interpretation. The City's Code defines "Floor Area" to mean "the ratio of the gross floor area of all structures on a lot to the lot area, excluding vertical core circulation areas for multistory structures. "Art. 3, Ch. 2, City Code. (Emphasis supplied). The City's Code defines "Structure" as "that which is three

46 S.W. 1st Street, 3rd Floor, Miami, FL 33130 Ph: 305-381-6060 Fx: 305-381-9457 www.shubinbass.com

EXHIBIT "A"

(3) feet or more in height, built or constructed or erected or tied down having a fixed location on the ground or attached to something having a permanent location on the ground, such as buildings, homes, mobile homes, towers, walls, fences, billboards, shore protection devices, and poster panels." *Id.*

Legally and grammatically, it is clear that the Equestrian Arena is a "structure" as that term is defined by the City Code and commonly understood. Because the Equestrian Arena is a ***single-story*** structure – no exception exists for the calculation of its floor area because the only enumerated definitional exception is limited to multistory structure which this is not. Under the doctrine of *expressio unius est exclusion alterius*, the Code's express mention of one exclusion directly implies that none other exists. By all measurements and all definitions then, the Equestrian Arena is – under the City's Code – a "structure" comprising 80,400 square feet of Floor Area. The City staff's contrary administrative interpretation is therefore clearly erroneous and must be reversed.

II. The Equestrian Arena is Prohibited by the EOZD District Regulations

The Equestrian Arena is located within the Equestrian Overlay Zoning District ("EOZD"). *See* Exhibit A. The operative district regulations for the EOZD prohibit the development of any commercial structure in excess of 20,000 square feet of gross floor area. *See* Article 10, Sec. 6.10.11(d), City Code. Because the Equestrian Arena exponentially exceeds the ***maximum*** **permitted** commercial development intensity within the EOZD, it is prohibited therein. As such, it was clear and reversible error for the City's administration to approve its development within the EOZD District.

The Appellants reserve the right to supplement this appeal with additional legal authority and arguments if and when the City responds to their Public Records Act requests.

Sincerely yours,

John K. Shubin, Esq.
Jeffrey S. Bass, Esq.
Amy E. Huber, Esq.
For the firm

cc: Jeff Kurtz, Esq., City Attorney
Mr. David Flinchum, Planning & Zoning Manager

SEXTON ENGINEERING ASSOCIATES, INC

CONSULTING ENGINEERS AND SURVEYORS

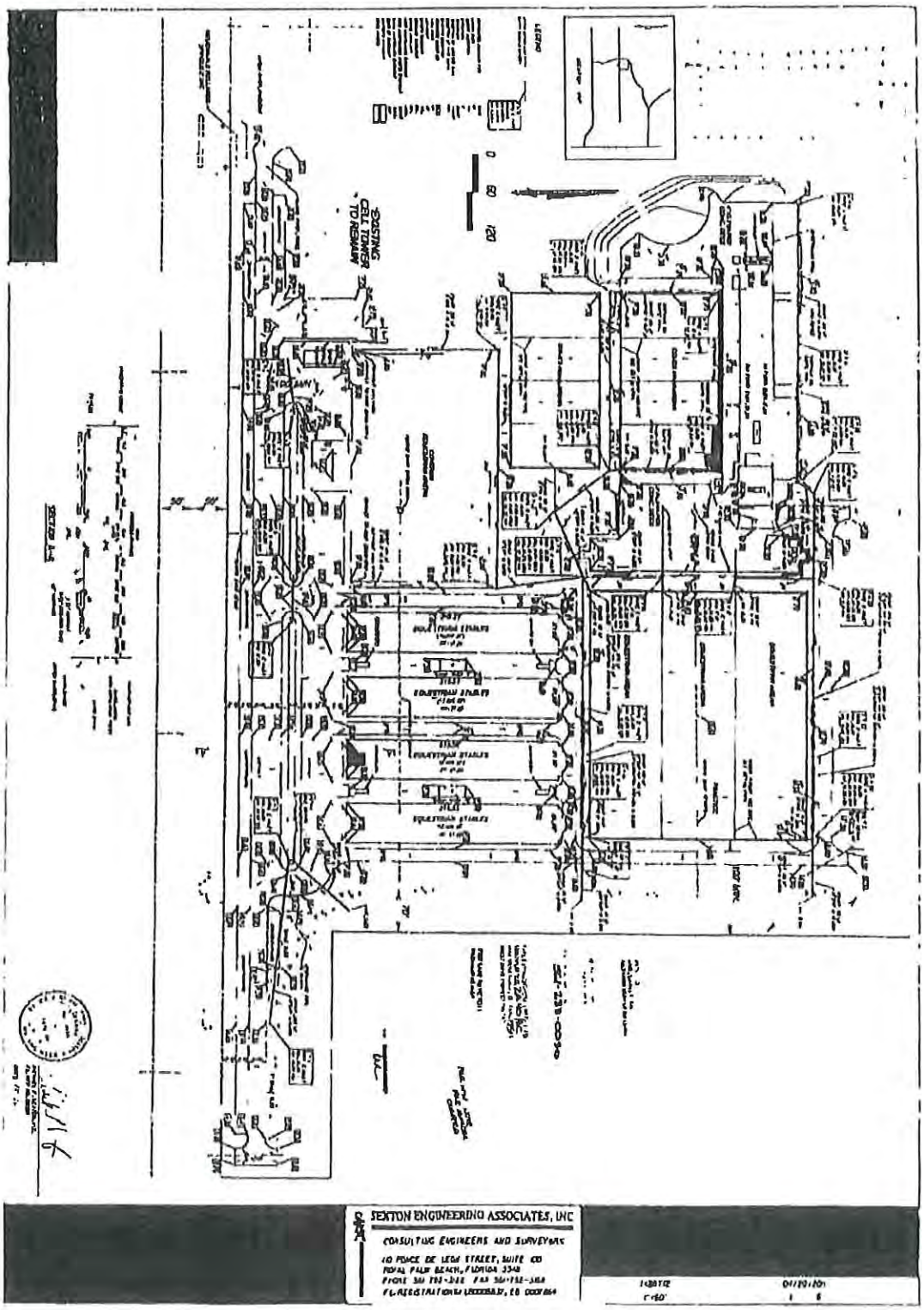

EXISTING CELL TOWER TO REMAIN
SEXTON ENGINEERING ASSOCIATES, INC
CONSULTING ENGINEERS AND SURVEYORS

EXHIBIT "B"

WELLINGTON

A Great Hometown...
Let Us Show You!

Planning, Zoning Division
12300 Forest Hill Blvd., Wellington, FL 33414 (561) 791-4000 pzapplications@wellingtonfl.gov

PLANNING & ZONING INTERPRETATION REQUEST

I. PETITIONER OR AGENT INFORMATION

Petitioner(s) if other than owner(s) Charlie & Kim Jacobs/ Solar Sportsystems, Inc.
Address: 2730 Polo Island Dr. A104 / 13207 Polo Club Rd, C104/C105 City: Wellington ST FL Zip _____

Phone: _____ FAX _____

Agent: * John Shubin, Jeff Bass, Amy Huber
Company Name: Shubin & Bass, P.A.
Address: 46 SW 1st St, 3rd Floor City: Miami ST FL Zip: 33130
Phone: 305 · 381 · 6060 FAX 305 · 381 · 9457

*All correspondence will be sent to agent unless otherwise requested

II. INTERPRETATION REQUEST

A. INTERPRETATION REQUEST (State the Code and Section thereof for which the interpretation is requested Be specific with respect to the nature of your interpretation request)
Article 10, section 6.10.11(d)

The Commercial stables, in their entirety - are structures - and exceed the 20,000 commercial use limited in EOZD. The Commercial stables violate sec. 6.10.11(d.)

See attached appeal.

B Project Name (If applicable):
Equestrian Village

C Project Address (If applicable)

Amy Huber

From:	Amy Huber
Sent:	Wednesday, April 18, 2012 7:19 PM
To:	'arodriguez@wellingtonfl.gov'; 'jkurtz@wellingtonfl.gov'; 'rbasehart@wellingtonfl.gov'; 'dflinchlm@wellingtonfl.gov'; 'pschofield@wellingtonfl.gov'
Cc:	John Shubin
Subject:	Appeal of Administrative Interpretation - Barn FAR letter
Attachments:	bellissimo barns FAR.docx
Importance:	High

Dear Ms. Rodriguez:

This correspondence is filed on behalf of Charles and Kimberly Jacobs and Solar Sportsystems, Inc. (collectively, the "Appellants"), the owners of real property located in the City of Wellington at 2730 Polo Island Drive, A-104, Wellington, Florida and 13307 Polo Club Road, C-104 and C-105, Wellington, Florida, respectively, and is intended to appeal the administrative interpretation related to the calculation of Floor Area for the east and west barns (the "Subject Interpretation")(A true and correct copy of the Subject Interpretation is attached to this e-mail).

Please consider this correspondence as the Appellants' appeal of the Subject Interpretation and corresponding request for a public hearing regarding same. This appeal is filed in an abundance of caution via e-mail this evening, as we only learned of this Interpretation less than hour ago, despite our numerous public records act requests and specific requests for this exact information. If there are forms and/or fees associated with this Administrative Appeal, kindly identify them for us at your earliest convenience, and we will remit them forthwith.

I. The Stables in their Entirety are Structures with Floor Area

The City's Land Development Regulations, Florida law, and common sense require the reversal of the Subject Interpretation. The City's Code defines "Floor Area" to mean "the ratio of the gross floor area of all structures on a lot to the lot area, excluding vertical core circulation areas for **multi**story structures. "Art. 3, Ch. 2, City Code. (Emphasis supplied). The City's Code defines "Structure" as "that which is three (3) feet or more in height, built or constructed or erected or tied down having a fixed location on the ground or attached to something having a permanent location on the ground, such as buildings, homes, mobile homes, towers, walls, fences, billboards, shore protection devices, and poster panels." *Id.*

Legally and grammatically, it is clear that the Stables – in their entirety - are "structures" as that term is defined by the City Code and commonly understood. By all measurements and all definitions, the entire floor area of each stable is – under the City's Code – a "structure" comprising of square feet of Floor Area. The City staff's contrary administrative interpretation is therefore clearly erroneous and must be reversed.

II. Commercial Use in Excess of 20,000 sq. ft is Prohibited by the EOZD District Regulations

The Stables are located within the Equestrian Overlay Zoning District ("EOZD"). The operative district regulations for the EOZD prohibit the development of any commercial **use** in excess of 20,000 square feet of gross floor area. *See* Article 10, Sec. 6.10.11(d), City Code. Because the

Stables exponentially exceed the ***maximum* permitted** commercial development intensity within the EOZD, it is prohibited therein. As such, it was clear and reversible error for the City's administration to approve its development within the EOZD District.

The Appellants reserve the right to supplement this appeal with additional legal authority and arguments if and when the City provides us with the additional documentation requested as they were required to do by law.

Thank you for your anticipated attention to this matter.

Amy E. Huber, Esq.
Shubin & Bass, P.A.
46 S.W. 1st Street
Third Floor
Miami, Florida 33130
ahuber@shubinbass.com
Tel. (305) 381-6060
Fax (305) 381-9457

Attention: The information contained in this e-mail message is confidential information and privileged. The information contained herein is intended solely for the use of the individual(s) named above. If the recipient of this message is not the intended recipient, you are hereby notified that any distribution or dissemination of this communication is strictly prohibited. In the event that you have received this communication in error, please contact the sender by reply e-mail and destroy any and all copies of the original message.

From: Jeff S. Kurtz [mailto:jkurtz@wellingtonfl.gov]
Sent: Wednesday, April 18, 2012 6:50 PM
To: John Shubin; Amy Huber
Subject: FW: Barn FAR letter

Copy of barn FAR letter.

From: Robert Basehart
Sent: Wednesday, April 18, 2012 6:26 PM
To: Jeff S. Kurtz
Subject: Barn FAR letter

Robert Basehart, AICP
Growth Management Director
Wellington, Florida
12300 Forest Hill Boulevard, Wellington, Fl 33414
561/753-2578 FAX 561/791-4045

E-mail addresses are public record under Florida Law and are not exempt from public-records requirements. If you do not want your e-mail address to be subject to being released pursuant to a public-records request do not send electronic mail to this entity. Instead, contact this office by telephone or in writing, via the United States Postal Service.
Communication made through e-mail or any other computer messaging system shall in no way be deemed to constitute legal notice to The City of Wellington or any of its agencies, officers, employees, agents or representatives with respect to any existing or potential claim or cause of action.

WELLINGTON

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

Manager
Paul Schofield

March 20, 2012

Mark Bellissimo, Managing Member
Far Niente Stables II, LLC
114440 Pierson Road
Wellington, Florida 33414

SUBJECT: STABLE STRUCTURES AT EQUESTRIAN VILLAGE EQUESTRIAN VILLAGE PROPERTY (aka POLO VILLAGE II); PROPERTY (59.29 ACRES) LOCATED AT N.E. CORNER OF SOUTH SHORE BLVD & PIERSON RD., WELLINGTON.

Dear Mr. Bellissimo:

This letter is to inform you that after having reviewed the physical construction of the recently installed stable structures at the above referenced property it is our determination the majority of the area under roof in each structure must be counted as floor area.

Originally, descriptions that you gave indicated the interior stalls would not be attached to structural components supporting the roofs and the top of the stalls would be substantially below the eve line of the buildings. This would have resulted in a true and readily apparent separation between the roof structure and the individual horse stalls. It was understood the stable structures would have no walls on any side. We were told that stables & structures would be constructed just like the stables at the Jim Brandon Equestrian Center owned and operated by Palm Beach County. After having visited the Jim Brandon Center, we were in agreement that your proposed stable buildings could qualify to not count as building square footage for the purpose of calculating the floor area ratio for the overall Equestrian Village site.

After having visited your site and inspected the completed stable buildings, we have concluded what has been constructed is not consistent with our earlier understanding, and that the buildings do not meet the test for exclusion from floor area calculations. The exterior face of the structure constitutes a wall system both visually and as a practical matter a part of the overall structural support. The end walls absolutely enclose the structure and the stable units extend up to essentially eave level and are physically attached to structural components. Since the majority of the sides of the structure are enclosed by walls, the majority of the interior area will be considered as building floor area.

I am willing to exclude from the floor area calculations the unenclosed patio areas under roof at both ends of the building, as well as the east/west pass-through isles between the banks of stalls (since they do not have side walls).

This accommodation will reduce the floor area of the stable buildings to approximately 62.4% of the area under roof, which will result in a calculated floor area of 12,295 square feet per building for the19, 698 sq. ft per building area under roof. I certainly invite you to provide more exact calculations and am open to making reasonable adjustments with any supportive documentation you may provide.

Please also be advised that in the event you believe that my determination is not correct, you have the right to appeal it to the Planning, Zoning & Appeals Board. They are empowered to make binding interpretations on the provisions of the Village's Land Development Code.

If you have any questions relative to any of the information provided in this letter, please do not hesitate to contact me..

Very truly yours,

Robert E. Basehart, AICP
Growth Management Director

Cc: Paul Schofield, Village Manager
Jim Barnes, Director of Operations
Jeff Kurtz, Village Attorney
David Flinchum, Planning & Zoning Manager
Jacek Tomasik, Building Official

WELLINGTON

A GREAT HOMETOWN

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

Manager
Paul Schofield

December 24, 2013

John Shubin, Esq./Jeff Bass, Esq./Amy Huber, Esq.
Law Offices of Shubin & Bass
45 S.W. 1st Street, 3rd Floor
Miami, Florida 33130
Jupiter, Florida 33458

SUBJECT: Requests for Planning & Zoning interpretation related to Chapter 10, Section 6.10.11(D) and Article 6, Section 6.5.8.C.2 of the Village of Wellington land Development Regulations. Issues addressed are the size of the barns (aggregate), covered arena, viewing deck/vender area/seating area at the property/project known as the Equestrian Village.

Dear Msrs. Shubin & Bass and Ms. Huber:

This letter is in response to your request for interpretation of the above referenced provisions of the Village of Wellington Land Development Regulations. Your request for interpretation includes an opinion that the existing facilities referenced above were approved erroneously, because they do not comply with the Code provisions referenced. The Village staff interpretations of the subject provisions are as follows:

Chapter 10, Section 6.10.11(D):

This provision is a subsection of Section 6.10.11, which provides Development Standards for commercial uses within the Equestrian Overlay Zoning District (EOZD). The subsection in question provides that single (individual) uses governed therein shall not exceed a gross floor area of twenty thousand (20,000) square feet. You note that several uses of the Equestrian Village site exceed 20,000 square feet. In your various request forms you include the stables, the covered equestrian arena structure, viewing deck, and the outdoor seating/vendor areas.

The staff's interpretation of the provisions of Section 6.10.11 is that the intent of this Section is to regulate retail development allowed within the EOZD, and that the size limitation provided in Subsection 6.10.11(D) does not apply to the structures or uses that are referenced in your request. This interpretation is supported by the intent statement at the beginning of the Section, where it is stated that commercial uses regulated by this section shall be limited to those that provide goods and services that serve the equestrian and agricultural community. This is repeated in Subsection B (Orientation and Scale) where it indicates that commercial uses should be oriented toward agricultural and equestrian uses of a community serving nature, which implies retail and service oriented uses. Further, in Subsection C (Architecture) it is stated that commercial buildings and centers should be of a mass, bulk and style that is consistent with equestrian uses such as barns and stables. This is a clear indication that structures that serve agricultural or equestrian activities and uses such as barns, stables, arenas, spectator areas and uses are not intended to be considered commercial for the application of the development standards of this section.

EXHIBIT
tabbies
B

This interpretation is not one that has been made as a part of the review and permitting for the Equestrian Village project. I am attaching a copy of an interpretation/policy memo that was made in 2004. Although the actual Section number has changed slightly due to LDR amendments to the EOZD, the subject matter is the same provision which you are currently addressing.

The one part of your inquiry that we believe is subject to the 20,000 square foot limitation are retail uses. Subsection 6.10.11(D) provides that the gross floor area limitation applies to any single use on the site. This would apply to any individual business, but does not limit the total floor area of any category of use cumulatively. Therefore, in the vendor area, the total floor area allowed for any individual vendor space is 20,000 square feet, but the cumulative floor area for vendors is not limited by this provision. The same would also apply to restaurant spaces. No individual restaurant or food service space can exceed 20,000 square feet, but the cumulative total of restaurant space is not regulated by this provision. Barns are not regulated by this provision, as noted above. However, even if they were, each barn would be regulated individually. Since the two constructed barns are both less than 20,000 square feet in size, there would be no Code issue.

It is important to note the equestrian arena is a structure or use which is not regulated by the provisions of Section 6.10.11(D). Further, as you are aware, it is the staff's opinion that the structure in question has no floor area, by definition. In the past you have expressed disagreement with this interpretation. However, that issue has not been addressed in your current request for interpretation. Therefore, it is our understanding that you are not currently pursuing the issues of the floor area calculation for the barn structure or the covered arena structure.

Article 6, Section 6.5.8.C.2:

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.

If you have any questions regarding this matter or action, please do not hesitate to contact me.

Very truly yours,

Robert E. Basehart, AICP
Project Director

Cc: Paul Schofield, Village Manager
Tim Stillings, Planning and Development Services Director
Laurie Cohen, Village Attorney
David Flinchum, Planning & Zoning Manager

VILLAGE OF WELLINGTON
Planning, Zoning & Building Department

Policy Number P&D-2004-000-01
Date Approved: June 17, 2004

SUBJECT: Commercial developments within the Equestrian Overlay Zoning District (EOZD)

CROSS-REFERENCE: Section 6.10.K. of the Unified Land Development Code (ULDC).

PURPOSE: To clarify what type of commercial development is governed by the Commercial Development Standard of the EOZD.

POLICY: Section 6.10.K. of the ULDC outlines land development regulations for commercial development within the EOZD. Included in Section 6.10.K. are regulations for:

1. Planned Development Rezoning;
2. Orientation and Scale;
3. Architecture;
4. Size;
5. Hours of Operation;
6. Lighting;
7. Outdoor Display and Storage; and
8. Buffers.

The intent of Section 6.10.K. was to specifically regulate commercial retail development. There were no intentions for this provision to apply to commercial stables.

PROCEDURE: The Planning and Zoning Division will review petitions for commercial developments within the EOZD in according with this policy.

Paul Schofield, AICP
Community Service Director

Caryn Outlaw-Young, AICP
Planning and Zoning Director

THE VILLAGE OF WELLINGTON

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

Manager
Paul Schofield

NOTICE OF HEARING

TO: All parties on the attached Service List

YOU WILL PLEASE TAKE NOTICE THAT a hearing will be held on Monday, the 30th of June at 7:00 PM, or as soon thereafter as the matter may be heard, before the Wellington Planning, Zoning and Adjustment Board (PZAB), in the Wellington Council Chambers, located at 12300 Forest Hill Boulevard, Wellington, Florida, on the following matter:

Appeal of Administrative Determination(s) made by Planning & Development Services Department staff relating to building and development permits issued on property located at the northeast corner of the intersection of South Shore Boulevard and Pierson Road, Petition No. 2014-003AA-14-015

The hearing will be a quasi-judicial proceeding in accordance with the provisions of Sec. 1.12.1.E of the Wellington Land Development Regulations.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been sent by U.S. Mail or by Eservice all parties on the attached service list, this 29th day of April, 2014 and that notice of the hearing will be printed in the Palm Beach Post on or before June 15, 2014.

Robert E. Basehart

Robert E. Basehart, AICP
Village of Wellington Project Director

EXHIBIT
C

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

Manager
Paul Schofield

SERVICE LIST

Claudio Riedi, Esq.
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criedi@LSRCF.com

Daniel S. Rosenbaum, Esq.
Rosenbaum Mollengarden PLLC
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West Palm Beach, FL 33401
Jacobs02417-filings@r-mlaw.com
Litigation-filings@r-mlaw.com
cstonek@r-mlaw.com

John Shubin, Esq.
Jeff Bass, Esq.
Amy Huber, Esq.
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Miami, Florida 33130
jshubin@shubinbass.com
ahuber@shubinbass.com
eservice@shubinbass.com

ROSENBAUM MOLLENGARDEN PLLC
ATTORNEYS AT LAW

March 4, 2014

VIA ELECTRONIC MAIL AND U.S. MAIL

Awilda Rodriguez, Clerk
Attn: Tamika Rogers
Village of Wellington
12300 Forest Hill Blvd.
Wellington, FL 33414

Re: ESP – Development; Public Records Request – Chapter 119, Florida Statutes

Dear Ms. Rodriguez and Ms. Rogers:

Pursuant to Chapter 119, *Florida Statutes*, please provide to us, on behalf of our client, Equestrian Sport Productions, LLC ("ESP"), with the documents requested below:

Records Requested

1. All legislative history pertaining to Article 1 Chapter 12 of the Wellington Unified Land Development Code.

ESP agrees to pay fees for search and copying in accordance with Chapter 119, Florida Statutes. If you have any questions or need more information in order to expedite this request, please call me at 561-653-2900.

Very truly yours,

Tatiana B. Yaques
For the Firm

TBY/en

cc: Daniel S. Rosenbaum, Esquire (via email)
Elizabeth L. Hertz, Esquire (via email)
Laurie Cohen, Esquire (via email)
Mark J. Bellissimo, Managing Member (via email)

23J2228

EXHIBIT
D

250 South Australian Avenue, 5th Floor • West Palm Beach, FL 33401
Telephone: 561-653-2900 • Facsimile: 561-820-2542
r-mlaw.com

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

POLO FIELD ONE, LLC, STADIUM NORTH, LLC, STADIUM SOUTH, LLC, FAR NIENTE STABLES II, LLC and EQUESTRIAN SPORT PRODUCTIONS, LLC

Plaintiffs,

v.

CHARLES JACOBS and KIMBERLY JACOBS, Husband and Wife, SOLAR SPORTSYSTEMS, INC., a New York Corporation and THE VILLAGE OF WELLINGTON, a Municipal Corporation of the State of Florida

Defendants.

_____/

CASE NO. 502014CA003331XXXXMB

DIVISION: AJ

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR TEMPORARY INJUNCTION

Plaintiffs, Polo Field One, LLC, Stadium North, LLC, Stadium South, LLC, Far Niente Stables II, LLC, and Equestrian Sport Productions, LLC (collectively, the "Property Owners") by and through their undersigned counsel, respectfully submit this Memorandum of Law in Support of Plaintiffs' Motion for Temporary Injunction, which is set for hearing on Friday, August 1, 2014, at 10:00 a.m.

INTRODUCTION

The issue in this case is whether the Village of Wellington's implementation and enforcement of ordinance 1.12.1 of Wellington's Land Development Regulations (the "Code") permits any landowner or any person with a contractual interest in any land in the Village of Wellington to utilize the Village's processes to obtain binding decisions regarding the property

of other landowners without the participation of the property owner in the process. Between 2011 and 2013, Property Owners obtained various development orders from the Village, in accordance with the Village's permitting and review processes, to develop a 59.3 acre tract of land (the "Subject Property") as an equestrian facility (the "Equestrian Village project"). Obtaining all of the necessary development orders, Property Owners constructed various structures upon the Subject Property including barns, a covered arena, riding rings, restrooms, offices, manure bins, a viewing deck/seating area, and horse wash racks (the "Structures"). On December 6, 2013, after the Property Owners' rights in the development orders vested - after all of the required development orders were issued by the Village, the structures had already been constructed and no appeal to the Circuit Court was ever taken, Charles Jacobs, Kimberly Jacobs, and Solar Sportsystems, Inc. (the "Jacobs") submitted four Planning and Zoning Interpretation Requests (collectively the "Interpretation Requests") to the Village pursuant to § 1.12.1 of the Code. The Interpretation Requests challenge the Village's assessment of gross floor area and building heights of the Structures in the Equestrian Village project.

The Village accepted the Jacobs' Interpretation Requests under § 1.12.1, and issued a written interpretation dated December 24, 2013 even though the interpretations involve determinations that the Village has already made and the Property Owners have already relied upon in building the Structures for the Equestrian Village Project. Unsatisfied with the Village's Interpretation, the Jacobs appealed the interpretation to the Planning Zoning and Adjustment Board ("PZAB"). The hearing on the PZAB appeal is scheduled for August 6, 2014.

ARGUMENT

The implementation of § 1.12.1 strips the Property Owners of their vested rights to development orders previously issued by the Village and deprives the Property Owners of their

ROSENBAUM MOLLENGARDEN PLLC * 250 AUSTRALIAN AVE S * STE 500 * WEST PALM BEACH, FL 33401
(561) 653-2900 * FAX (561) 820-2542

right to substantive due process under the United States and Florida Constitutions. A temporary injunction is necessary to maintain the status quo until the Court can fully adjudicate the issues. The Property Owners seek a temporary injunction prohibiting the Village from conducting an appeals hearing before its Planning Zoning and Adjustment Board ("PZAB") on the § 1.12.1 issues (scheduled for August 6, 2014); and prohibiting the Village from commencing any other proceeding pursuant to § 1.12.1 relating to the Property Owners' Property.

I. Enactment of the Ordinance:

In pertinent part, § 1.12.1.B states that "An interpretation may be requested by any landowner or person having a contractual interest in land in the Village of Wellington. . . ." The Code does not specify that the person requesting an interpretation must have an interest in the property for which he or she is seeking the interpretation and the Village takes the position that the Code does not have any such requirement. Section 1.12.1.C.3 provides that the Village shall render an interpretation, but contains no provision for notifying the owner of the property that an interpretation was requested or that an interpretation was issued. Finally, § 1.12.1.E.1 provides for an appeal from the Village's interpretation, but makes no provision for the property owner to appeal that interpretation:

> E. **Appeal:**
> 1. Initiation. Twenty (20) working days after issuance of a written interpretation by the appropriate Village official responsible for rendering the interpretation, **the applicant** may appeal the decision to the Board responsible for appeal, as provided in this Code.

§ 1.12.1.E.1 (Emphasis supplied).

§ 1.12.1 is contrary to the purpose and intent of Article I of the Code. Because § 1.12.1 allows for endless rounds of interpretations – and potentially reversals – of development orders

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(561) 653-2900 * FAX (561) 820-2542

already issued by the Village and already relied upon by property owners, it squarely contradicts the stated purpose of Article I that there should be "consistent standards and procedures for the review and approval of all proposed development of land in The Village." § 1.1.4.B. Further, the Village has stated that Article I is intended to provide a permitting process that is "**efficient, in term of time and expense**" and "**equitable,** in terms of consistency with established regulations and procedures, **respect for rights of property owners**, and consideration of the interest of the citizens of The Village." § 1.1.4.C (emphasis supplied). § 1.12.1 is inefficient, time consuming, expensive, and utterly disregards the rights of the property owner whose property is subject to an interpretation request filed by a disinterested third party applicant. It is well-established law that infringement upon land is not remediable by assessment of damages at law and an injunction may be granted because "every piece of land in the world has a peculiar value." *Daniel v. May,* 143 So. 2d 536, 538 (Fla. 2d DCA 1962).

Notably, even the appeal process from an Interpretation Request disregards the property owner, and relegates the property owner to a class of mere interested parties (along with all other residents in the Village) who have an opportunity to be heard at a PZAB appeal hearing, but only if such hearing is sought by the Applicant. Under § 5.1.18(h), only a person entitled to notice of an application has standing to file an appeal to the PZAB. Thus, where an interpretation has been issued, only the applicant has standing to file an appeal with the PZAB. *See* § 1.12.1.E.1; § 5.1.18(h). Under this scheme, if a disinterested party seeks an interpretation request from the Village on property the applicant has no interest, and the Village issues an interpretation that is unfavorable to the property owner, the property owner is entitled to no notice of the decision made concerning his property and has no appeal rights to remedy the adverse decision.

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Under § 1.12.1, a property owner is subjected to not only the process for obtaining development orders, and any attendant appeals of that process, but then is unendingly in danger of having those development orders rescinded through the use of interpretation requests by uninterested parties. These interpretation requests are themselves subject to a multi-tiered appeal process, including (1) the Village's Official Interpretation; (2) the PZAB's determination; (3) the Circuit Court's determination in its appellate capacity on first tier certiorari review; and (4) the District Court's determination on second tier certiorari review. The final outcome of the § 1.12.1 proceedings will be binding on the property owner vis-a-vis the Village, because the ultimate decision will be applied to the property by the Village.

§ 1.12.1 affects and infringes upon the rights of property owners in the Village of Wellington. Section 1.12.1 is an arbitrary and capricious legislative act that implicates the substantive due process rights of landowners in the Village of Wellington. *Romero v. Watson*, 2009 WL 1361714 at *6 (N.D. Fla. May 13, 2009) ("In the Eleventh Circuit, an arbitrary or capricious legislative act may provide the basis for a substantive due process claim, which is called an 'arbitrary and capricious due process claim.'"). Because the Property Owners' rights in the development orders are state-created rights, they fall within the category of property rights protected by substantive due process. *Lewis v. Brown*, 409 F. 3d 1271, 1273 (11th Cir. 2005) ("Where an individual's state-created rights are infringed by 'legislative act' the substantive component of the Due Process Clause generally protects him from arbitrary and irrational action by the government.").

An ordinance that allows persons or entities to initiate and obtain multiple binding opinions from the Village and the courts that decide the development entitlements associated with property in which they have **no ownership or contractual interest**, does not have a

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relationship to a legitimate purpose in public health, safety, moral or general welfare. *Department of Ins. v. Dade County Consumer Advocate's Office*, 492 So. 2d 1032, 1034 (Fla. 1986)("Constitutional law never sanctions the granting of sovereign power to one group of citizens to be exercised against another ***unless the general welfare is served.***") (emphasis added) (quoting *Liquor Store v. Continental Distilling Corp.*, 40 So. 2d 371, 374 (Fla. 1949). Before commencing this action, Property Owners requested "[a]ll legislative history pertaining to Article I Chapter 12" of the Code. On March 11, 2014, the Village responded to Property Owners' request and provided them with 141 pages of legislative history. The legislative history of § 1.12.1 does not reflect that it was enacted to serve any purpose, let alone a valid public purpose; thus, § 1.12.1 is an unjustified exercise of the Village's police powers. *Chicago Title Ins. Co. v. Butler*, 770 So. 2d 1210, 1217-18 (Fla. 2000) (rejecting an alleged public purpose that was not discussed in the legislative history of statutory amendments).

The Village's enactment of § 1.12.1 is a legislative act because it resulted in a Village ordinance that may be utilized and enforced against all persons or entities who own real property in Wellington. *Foley v. Orange County,* 2013 WL 4110414 at *10 (M.D. Fla. August, 13, 2013) (citing *Dekalb Stone, Inc. v. County of Dekalb, Ga.*, 106 F. 3d 956, 959 (11th Cir. 1997) ("Legislative acts . . . 'generally apply to larger segments of – if not all – society . . . laws and broad-ranging executive regulations' [are] common examples of legislative acts"). Since the Property Owners' challenge of 1.12.1 does not involve the interpretation issued to the Jacobs, but rather, the Village's position regarding of the scope of persons entitled to a 1.12.1 interpretation, the challenge before the court is a challenge to a legislative act. *Dekalb,* 106 F.3d at 959 ("a legislative act involves policy making rather than mere administrative application of existing policies"). This Village grant of authority allows these "third-parties" to permanently and

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adversely affect landowners' development entitlements and to constantly attack these rights with the intent to deprive others of their rights. There is no time limit associated with § 1.12.1. Thus, § 1.12.1 exposes Property Owners to an unlimited number of determinations and challenges, of and to, their development rights by third-parties, at any time in the future. The Village has in fact allowed third-parties to obtain determinations of how Code provisions apply to property in which they have no ownership or contractual interest.

II. The Issuance of an Interpretation to the Jacobs

The Village's issuance of the interpretation to the Jacobs divests Property Owners of their vested rights. The interpretation issued to the Jacobs makes the Property Owners' vested rights in development orders that have already been issued by the Village and relied upon by the Property Owners contingent on the various proceedings and levels of challenges stemming from a § 1.12.1 interpretation. At each level of the process, Property Owners' vested rights could be revoked. An injunction must issue to estop the Village from initiating proceedings divesting Property Owners of development orders issued by the Village after Property Owners have relied upon them. *Town of Largo v. Imperial Homes Corp.*, 309 So. 2d 571, 573 (Fla. 2d DCA 1975) ("One party will not be permitted to invite another onto a welcome mat and then be permitted to snatch the mat away to the detriment of the party induced or permitted to stand thereon"); *Equity Resources, Inc. v. County of Leon,* 643 So. 2d 1112, 1117 (Fla. 1st DCA 1994) (elements of equitable estoppel against local authorities are (1) good faith reliance (2) on some act or omission of the government and (3) a substantial change in position or the incurring of excessive obligations and expenses so that it would be inequitable and unjust to destroy the right he acquired); *Hollywood Beach Hotel Co. v. City of Hollywood*, 329 So. 2d 10, 15-16 (Fla. 1976) (same).

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Property Owners reasonably relied upon the Village's interpretation of its Code provisions, the Village's approval of the development orders, and the Village's issuance of the development orders pursuant to its procedures and incurred excessive obligations and expenses in reliance on those development orders. *Town of Largo*, 309 So. 2d at 573 (town enjoined from enforcing new zoning requirements where it was determined that developer had relied on town's prior approval of a rezoning when determining whether to purchase and commence development project upon property); *see also Equity Resources*, 643 So. 2d at 1112 (holding it would be grossly unfair to deny vested right in a continuously-issued permit). While the Village's interpretation issued to the Jacobs was not adverse to Property Owners' vested development rights, the fact that the Village engaged in the process has opened the "Pandora's Box", subjecting Property Owners to a multi-tiered review process and possible reversal of their vested rights. Florida common law provides that the government is estopped from diminishing a property owner's vested rights to development entitlements through government regulation. *Monroe County v Ambrose*, 866 So. 2d 707, 711 (Fla. 3d DCA 2003) ("The theory behind vested rights is that 'a citizen is entitled to rely on the assurances and commitments of a zoning authority ***and if he does, the zoning authority is bound by its representations***'") (emphasis added).

Property Owners have vested rights to the development orders issued by the Village. Property Owners submitted various applications for development orders to the Village to construct the Equestrian Village project, from 2011-2013. The requested development orders were issued by the Village pursuant to its permitting and review process. *Coral Springs Street Systems v. City of Sunrise*, 371 F. 3d 1320, 1333 (11th Cir. 2004) (Vested right to a construction permit or similar entitlements may be found where the conditions of equitable estoppel are

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present). In reliance on the Village's approvals and issuance of the development orders, Property Owners constructed various structures upon the Subject Property. Property Owners incurred extensive obligations and spent over two years obtaining the development orders and constructing the Equestrian Village project. *Coral Springs Street Systems*, 371 F. 3d at 1334 ("Florida courts have made it abundantly clear that when a property owner incurs a substantial investment of time or money in reasonable reliance on existing laws . . . he may acquire a vested right in a building permit.").

It would not serve justice if the Property Owners have to wait for a final adjudication in order to obtain relief from the Village's wrongful actions. The PZAB hearing must be enjoined in order to avoid subjecting the Property Owners' property rights to multiple levels of review that must be appealed very quickly, with the possibility that a decision adverse to Property Owners will be made at one of the various proceedings that become available under § 1.12.1. *Autozone Stores, Inc. v. Northeast Plaza Venture, LLC*, 934 So. 2d 670, 673 n.1 (Fla. 2d DCA 2006) (An injunction is the usual remedy in all litigation relating to rights in real estate)

CONCLUSION

Because the Village's enactment of § 1.12.1 deprives Property Owners of their right to substantive due process under both the Federal and Florida Constitutions (Count IV) and the commencement and continuance of § 1.12.1 proceedings divests Property Owners of their vested rights to development orders (Count VI) causing them irreparable harm for which there is no adequate remedy at law, the Court should grant Property Owners' Motion for Temporary Injunction.

Therefore, Plaintiffs, Polo Field One, LLC, Stadium North, LLC, Stadium South, LLC, Far Niente Stables II, LLC, and Equestrian Sport Productions, LLC, respectfully request that the

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that the Court enter a temporary injunction, 1) preventing the Village from commencing or continuing any legal proceedings pursuant to § 1.12.1 of the Code relating to the Subject Property that are requested by persons or entities who have no property or contractual interest in the Subject Property, including a temporary injunction prohibiting the Village from commencing the PZAB appeal hearing (currently scheduled for August 6, 2014), or in the alternative, 2) enter a temporary injunction, preventing the Village from commencing or allowing third-parties, including the Jacobs, to commence any proceeding, including interpretation requests and appeals from interpretation requests, which have the effect of divesting Property Owners' vested rights in the development orders, and any other relief which the Court deems just, proper and equitable.

Respectfully submitted,

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(*Certificate of Service follows*)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via ***Electronic Mail*** to the attached service list this 24 day of July, 2014.

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