

**Council**

Anne Gerwig, Mayor
 John T. McGovern, Vice Mayor
 Michael Drahos, Councilman
 Michael J. Napoleone, Councilman
 Tanya Siskind, Councilwoman

Manager

Paul Schofield

July 14, 2017

Jeffrey Kurtz
 Jeffrey Scott Kurtz, P.A.
 Chancellor North
 12012 South Shore Boulevard
 Suite 208
 Wellington, Florida 33414

Subject: Request for Planning & Zoning Interpretation/Confirmation regarding property located at 14785 Haymarket Court, Wellington.

Dear Mr. Kurtz:

Please accept this letter as my response to your Letter of October 19, 2016 requesting my interpretation of the Wellington Land Development Regulations (LDR) to confirm whether or not the owner of the above referenced property is entitled to keep/raise/train horses and/or other livestock thereon. Before I respond to those issues I want to commend you on the adeptness that you have demonstrated in keeping this matter from being reviewed by the Special Magistrate for nearly a year. However, I also want to make sure that you do not consider or attempt to allege that my delay in responding to your letter or agreeing to your numerous requests for postponements is in any way a reflection of any uncertainty related to the violation notices that have been issued on the property. The delays that have occurred have been entirely related to our willingness to accommodate both your schedule and your client's schedule and to give you the opportunities that you have requested from time to time to investigate possible defenses. In fact, I provided you with the interpretation(s) that you have requested in a letter I issued to you in November of 2015 that was primarily intended to address fence and tree removal permits on the same property, as well as to address the issue of a potential stable structure (copy attached).

My interpretation of the LDR as it relates to the property in question is that horses and other livestock are not permitted to be kept and no stable structures can be permitted. Table 6.8-2 (use matrix for PDD's) does not permit Agricultural uses in residential pods of PUD's, including keeping of livestock. The exception to this is the EOZD, which has its own use matrix that specifically allows them. Livestock, by definition, includes horses. Likewise, stables are not permitted in residential pods outside of the EOZD. The Supplemental Standards section of the LDR (Sec. 6.4.4, #104 & 105) specifically prohibits stable structures for either commercial or residential stabling outside of the EOZD. You will note that although stables are listed in the PDD use matrix, the right hand column refers readers to Supplemental Standard #105. It should also be noted that even if your client's property were not in a PUD and was in an area outside of the EOZD where livestock raising (breeding, raising and caring for) is permitted, Supplemental Standard # 67 requires a minimum lot size of 5 acres, which is greater than your client's property size.

Jeffrey S. Kurtz
14785 Haymarket Court
July 14, 2017
Page 2.

It is of further interest to note that there was a proposed ordinance considered by Village Council in the Spring of 2009, specifically written to amend the LDR so as to allow the keeping and stabling of horses on properties within Paddock Park I. The Staff performed a thorough survey of the community to determine the level of support for the change. Following hearings before the Planning, Zoning and Appeals Board, the Equestrian Advisory Committee and Village Council, The Council declined to approve the amendment by a unanimous vote. The point of noting this event is to reflect that it is clear that the intent and the interpretation of the LDR since 2002 has always been that the keeping and stabling of horses in Paddock Park 1 is not permitted, and proposed Code changes to allow such have been declined. Survey information collected in 2009 indicates that a majority of residents are not in favor of allowing horses and stables in the neighborhood.

Along with your request for interpretation you included a list of 16 questions which are generally not relevant to the interpretation you sought. However, I have answered them below. My responses are **bolded**:

1. Please confirm the property has a current future land use map designation of Residential B.
Yes, it is designated Residential B.
2. Please confirm the property has a current zoning designation of Wellington PUD / AR/SE/PUD.
Confirmed.
3. Please confirm that the property's future land use designation and zoning designation have remained unchanged since the Village of Wellington adopted its first land use map and zoning map.
Confirmed.
4. Please confirm that when the Wellington PUD was approved by Palm Beach County, horses would have been allowed on the property as evidenced by the deed restrictions associated with the property and recorded at OR Book 2009 Page 1632 of the Public Records of Palm Beach County.
Confirmed.
5. Please confirm that at the time of the Village's incorporation as a municipality horses and stables could have been on the property.
Confirmed. This changed in 2002 when the EOZD and other Code changes referenced in the body of this letter were adopted.
6. Please confirm that section 6.4.4.67 of the Village's Land Development Regulations (LDRs) or its Re: Jacobs Haymarket Request for Interpretation equivalent section was in existence in Palm Beach County's ULDC at the time of the Village's incorporation and remained in effect in the various iterations of the Village Code since incorporation.
I cannot speak for the County ULDC, but this section has been in the Wellington LDR since originally adopted.

Jeffrey S. Kurtz
14785 Haymarket Court
July 14, 2017
Page 3.

7. Please confirm that section 6.4.4.67 of the Village's LOR's or its previous iterations did not prevent horses and stables to be legally located on the property at the time of the Village's incorporation.
Whether intentionally or by oversight, Palm Beach County permitted horses and stables to be located in the subdivision where the property is located and Wellington continued that practice until 2002 when Code amendments were adopted (discussed above) that thereafter prohibited such.
8. Please confirm that horses and a physical stable (barn) existed on the property at the time of incorporation.
I cannot confirm whether there were horses and a stable on the property at the time of Village Incorporation.
9. Please confirm that the predecessor in title to Ms. Jacobs, Ms. Sandra Chaikin, who owned the property until September of 2014 maintained horses on the property during the course of her ownership of the property.
I cannot confirm whether Ms. Chaikin had horses or a stable on the property during her time of ownership.
10. Please confirm that Village of Wellington's Ordinance 2003-02 subject matter was the physical structures that constitute stables/barns and airplane hangars not the ownership and maintenance of horses on property.
Confirmed.
11. Please confirm that abandonment of a non-conforming use under the Village's LOR's has to be knowing and voluntary.
Abandonment of a non-conforming use and/or structure does not need to be either knowing or voluntary.
12. Please confirm that the abandonment of a use would not take place during the pendency of foreclosure action and resultant transfer of the property to the mortgage holder.
Not confirmed. Pendency of a foreclosure action does not toll the time for abandonment. Discontinuance of a nonconforming use is measured by time after the use is discontinued. Further, generally speaking, property owners are permitted to continue to occupy property that is in the process of foreclosure until the action is final.

Jeffrey S. Kurtz
14785 Haymarket Court
July 14, 2017
Page 4.

13. Please confirm that a seasonal use such as equestrian activity in Wellington would not be abandoned as a non-conforming use simply because horses were not on a property from April through December during any particular year.

Wellington recognizes the seasonal nature of the local equestrian community. While nearly all equestrian properties are conforming, if one or more of the few nonconforming equestrian properties in Town became inactive during the off-season, Wellington would not likely move to declare that property's use to be abandoned. However, if the activity did not resume during the following season, we would consider the use abandoned.

14. Please confirm that today horses may reside at the property legally in accordance with the Village's Code of Ordinances and Land Development Regulations.

Horses may not reside on the subject property today for the reasons stated in the interpretation provided above. As we have discussed, if you could demonstrate that horses were kept on the property since prior to 2002 and that use continued until within 6 months of the time your client took occupancy and reestablished that use, you will have established a continuing nonconforming use. Short of that, keeping horses or other livestock on the property is a violation of the Village Codes.

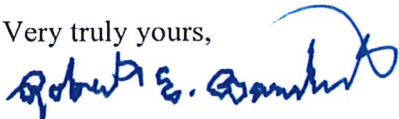
15. Please confirm that today a physical stable/barn would not be permitted to be built on the property in accordance with the Village's LDR's.

Confirmed.

16. Please confirm that no notice of non-conforming status was sent to the owners of the property or other landowners in the Paddock Park I subdivision.

I have no idea if such a notice was sent, but no such notice is required in order to establish a nonconforming use vs. a conforming one.

Very truly yours,



Robert E. Basehart
Director of Planning Zoning & Building

Cc: Paul Schofield, Village Manager
Jacek Tomasik, Building Official
Steven Koch, Code Compliance Manager
Cory Cramer, Development Review Coordinator
Laurie Cohen, Village Attorney

Council

Bob Margolis, Mayor
John Greene, Vice Mayor
Matt Willhite, Councilman
Anne Gerwig, Councilwoman
John T. McGovern, Councilman

Manager
Paul Schofield

November 25, 2015

Jeffrey S. Kurtz
Jeffrey Scott Kurtz, P.A.
Chancellor North
1012 South Shore Boulevard
Suite 208
Wellington, Florida 33414

Subject: 14785 Haymarket Court: Tree Removal and Fence Permits.

Dear Mr. Kurtz:

The purpose of this letter is to summarize Village Staff's conclusions after meeting with you last week, and to provide you with direction for continuing the processing of the above referenced permit applications.

Staff will issue a tree removal permit for trees located within the buildable area when a proposed site plan showing each tree (with type and caliper noted) is submitted. For the purpose of the removal permit, trees within the FPL easement that would otherwise be considered within the buildable area (by definition) are eligible for removal. All removed trees that are not considered invasive species will be mitigated by the planting of replacement trees somewhere on the property.

Your client's fence permit can be approved upon submittal of a corrected application, with revisions to the site plan to eliminate all references to equestrian structures and/or uses. The Code does not limit fencing arrangement as long as setbacks and height limits are met. However, there should be no depictions of or references to equestrian structures or uses on the plan. As you are aware, staff's interpretation of the LDR is that these structures and uses are not permitted in residential pods of PUD's, outside of the EOZD.

Table 6.8-2 (use matrix for PDD's) does not permit Agricultural uses in residential pods of PUD's, including keeping of livestock. The exception to this is the EOZD, which has its own use matrix that specifically allows them. Livestock, by definition, includes horses. Likewise, stables are not permitted in residential pods outside of the EOZD. The Supplemental Standards section of the LDR (Sec. 6.4.4, #104 & 105) specifically prohibits stable structures for either commercial or residential stabling outside of the EOZD. You will note that although stables are listed in the PDD use matrix, the right hand column refers

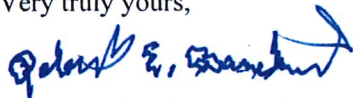
Jeffrey S. Kurtz
Tree Removal & Fence Permit, Haymarket Court
November 25, 2015
Page 2.

readers to Supplemental Standard #105. It should also be noted that even if your client's property were not in a PUD and was in an area outside of the EOZD where livestock raising (breeding, raising and caring for) is permitted, Supplemental Standard # 67 requires a minimum lot size of 5 acres, which is greater than your client's property size.

It is of further interest to note that there was a proposed ordinance considered by Village Council in the Spring of 2009, specifically written to amend the LDR so as to allow the keeping and stabling of horses on properties within Paddock Park I. Staff performed a thorough survey of the community to determine the level of support for the change. Following hearings before the Planning, Zoning and Appeals Board, the Equestrian Advisory Committee and Village Council, The Council declined to approve the amendment by a unanimous vote. I am sure you remember this proposal because you were the Village Attorney at the time this occurred. The point of noting this event is to reflect that it is clear that the intent and the interpretation of the LDR has always been that the keeping and stabling of horses in Paddock Park I is not permitted, and proposed Code changes to allow such have been declined. Survey information collected in 2009 indicates that a majority of residents are not in favor of allowing horses and stables in the neighborhood.

I hope this letter answers all of your questions and provides you with direction to continue through the permitting process. If you have any questions, please do not hesitate to contact me.

Very truly yours,



Robert E. Basehart, AICP
Planning, Zoning & Building Director

cc: Laurie Cohen, Village Attorney
David Flinchum, Planning & Zoning Manager
Damian Newell, Senior Planner