

I. PROJECT DESCRIPTION:

Project Name: Administrative Appeal - 14785 Haymarket Court (Kelly Jacobs)

Petition No: 17-107 (2017-061 AA): Administrative Appeal from determination(s) made by Planning & Development Department Staff related to the keeping of horses and other livestock on property located at 14785 Haymarket Court (Lot 1 of Block 21 of Paddock Park No. 1 of Wellington). Specifically:

- Article 6, Section 6.10 (EOZD). Although no specific subsection is referenced in the appeal, he quotes two (2) sentences in Subsection 6.10.2 (Applicability) which say that the provisions of the EOZD Ordinance will only apply to land located within the Equestrian Preserve Area, as identified on the Future Land Use Map of the Comprehensive Plan; and that the provisions of the EOZD will not affect the validity of any valid development order that existed prior to August 27, 2002. The appeal argues that the provisions of this section of the LDR should not apply to the subject property because it is not located within the EOZD and is not within the Equestrian Preserve Area.
- Article 6, Section 6.4.4.104 and 105 (Supplementary Standards). This subsection establishes specific standards regulating the development of Residential and Commercial Stables. The relevant provision being contested is the prohibition of either commercial or residential stables outside of the EOZD. His argument is that this section of the LDR is not applicable because the property owner does not have a stable on the property but she could have a stable if she desired because when Paddock Park 1 of Wellington was initially platted Palm Beach County was allowing the keeping of horses and construction of stables and the Covenants adopted with the Plat specifically allowed for same. The adoption of the stable supplementary standards did not occur until 2003 (Ordinance 2003-02).
- Article 6, Section 6.4.4.67 (Supplementary Standards). This subsection provides rules and standards for bona fide agricultural uses; which includes the boarding, breeding training and/or keeping of Livestock on properties. Livestock includes all of the types of animals generally considered farm animals, including horses. It should be noted that in addition to horses, the property owner in question has a goat and some chickens. The appeal states that this provision of the Code should not

apply because it was in the County Code before Wellington was incorporated and remains in the Wellington LDR today and before the Code Sections noted above were adopted horses were being allowed in Paddock Park 1.

- Article 1, Section 1.5.1 (General). This subsection provides that this Code shall not affect the validity of any lawfully approved development order that existed on the adoption date of this Code if the development order remains valid. The appellant argues that the Plat and Covenants for Paddock Park 1 are valid development orders that remain in effect today and therefore any property owner within the Plat is entitled to have horses & stables.

Owner: Kelly Jacobs

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

Location: Northwest corner of the intersection of Haymarket Court and Pierson Road and Squire Drive.

PCN: 73-41-43-32-03-021-001-0

Acres: 2.2 +/- acres.

SITE HISTORY:

The subject property is a lot within the Paddock Park 1 (aka North) subdivision (Lot 1 of Block 21 of Paddock Park No. 1 of Wellington), which was approved by Palm Beach County and recorded in the early 1970's. The recorded covenants and deed Restrictions for the subdivision contain provisions to allow the keeping and stabling of horses. Palm Beach County allowed horses and stables within the subdivision until the incorporation of Wellington in 1996 and the practice was continued until the adoption of the EOZD in 2002 and amendments to the supplementary standards for stables in early 2003. Until the Code changes were adopted only a few property owners in Paddock Park 1 established equestrian uses or structures. Although the appellant alleges that equestrian activity was established on the property in question, no documentation has been provided, and a review of aerial photography over the past 20 years shows no evidence of such. During the time that the Comprehensive Plan was initially being drafted, the majority of residents in Paddock Park 1 opposed being included in the Equestrian Preserve Area on the Future Land Use Map and when the Plan was adopted, the subdivision was not included. Likewise, in 2002 when the EOZD was adopted, this subdivision was not included. In 2009, the Village Council considered a petition initiated by several property owners in the subdivision to allow equestrian use and structures. However, Council declined based on overwhelming opposition by the Paddock Park 1 community.

APPEAL BACKGROUND:

The current property owner purchased the property in August of 2015. Prior to purchase, the owner's mother, a local real estate broker, had several discussions with staff regarding the issue of keeping horses on the property and was repeatedly advised that a horse or horses could be brought to the property for riding and exercise purposes, but cannot reside on the property, either in the open or within a structure. In March of 2016, following the purchase of the property, the owner was noticed by the Code Compliance Section for several violations; keeping of horses and other livestock, installing a fence without required landscape screening, tree removal without permits and constructing a horse shelter (open sided stable) without a permit and in violation of the provisions of Article 6, Section 6.4.4.104 and 105 of the LDR. The property owner removed the structure, provided the required landscape screening and obtained a tree removal permit with an agreement with staff on a replacement program and schedule. Consequently, those violations notices have been withdrawn. The issue that remains is the keeping of horses and other livestock on the property. It should be noted that the current property owner purchased the property as a foreclosure and it had been unoccupied for a substantial period of time. Therefore, there was not equestrian activity on the property when she purchased it and none was on the property and no evidence that such was on the property ever. Before purchasing the property it was not even fenced.

Article 1, Chapter 12 of the LDR requires that prior to the filing of an appeal a potential appellant must first request a formal interpretation of a questioned Code provision (on forms provided by the Village). Following receipt of a response to such request, the requestor must file an appeal within 20 working days. Staff received a request for interpretation of the Code provisions referenced above and an interpretation letter (attached) was issued on July 14, 2017, signed by Robert E. Basehart (Exhibit A). The appellant submitted his appeal on August 11, 2017 (Exhibit B), which is the subject of this agenda item. This item has been delayed in reaching the PZAB for several reasons including a request from the Appellant due to scheduling conflicts and due to agendas having a heavy caseload of controversial public hearings on zoning applications. Delays in having this matter considered have not and are not been problematic for the property owner.

STAFF ANALYSIS:

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

Standard of review: At the appeal hearing the Board shall consider the interpretation of the Village Official responsible for rendering the interpretation and public testimony in light of the Comprehensive Plan and this Code, whichever is applicable. The Board shall not modify or reject the Village Official's interpretation, if it is supported by substantial competent evidence, unless the interpretation is found to be contrary to the Comprehensive Plan and this Code, whichever is applicable.

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

It is also important to be aware that the decision of the PZAB with respect to an interpretation of a Code provision becomes the official interpretation of the Village, unless overturned by the Courts or modified by adoption of a future Code amendment. That interpretation must also be applied uniformly to all properties that are governed by the Code. Therefore, the potential impact on both currently developed and undeveloped sites should be considered. The provisions of the Code that are being appealed have been in the Code for many years and have been uniformly applied up to this date. A change in the interpretation of these provisions will adversely impact the reasonable investment backed desires and expectations of the vast majority of property owners in Paddock Park 1. It has been the longstanding and clear intent of the Village Council, staff and residents, backed by the longstanding and uniform interpretation of the Code provisions in effect since 2002 and 2003 that the keeping of horses and other livestock and the construction and use of stables are not permitted uses outside of the EOZD. Many property owners have purchased in Paddock Park 1 with the desire and understanding that this subdivision is limited to purely residential uses only. That was the universally accepted interpretation when some residents proposed a Code change in 2009 and the continued interpretation and understanding when Village Council declined to change it.

The interpretations rendered by Village Staff by the July 14, 2017 letter from Robert E. Basehart (Exhibit A), as well as the additional information included in this staff report, provide substantial competent evidence to justify a conclusion by the PZAB that the longstanding and uniformly applied interpretations are reasonably based.

- Challenge: Article 6, Section 6.10 (EOZD). The appeal argues that the provisions of the EOZD section of the LDR should not apply to the subject property because it is not located within the EOZD and is not within the Equestrian Preserve Area.

Response: No disagreement here. Staff has never taken the position that the provisions of the EOZD section of the LDR applies to any property outside of the EOZD or ever enforced those provisions outside of the EOZD, including this case. Our observation here is that equestrian and other livestock keeping is not permitted where the subject property is located. It is permitted within the EOZD, so if the owner wishes to conduct those activities on her property, she should relocate there or at least rent stabling there to house her animals.

- Challenge: Article 6, Section 6.4.4.104 and 105 (Supplementary Standards). The appeal argues that this section of the LDR is not applicable because the property owner does not have a stable on the property but she could have a stable if she desired because when Paddock Park 1 of Wellington was initially platted Palm Beach County was allowing the keeping of horses and construction of stables and the Covenants adopted with the Plat specifically allow for same. The adoption of the stable supplementary standards did not occur until 2003 (Ordinance 2003-02).

Response: Covenants and deed restrictions are not and cannot be enforced by government. Likewise, covenants and deed restrictions do not supersede government

regulation. Therefore, the fact that the Paddock Park 1 covenants recorded in the 1970's permit horses and stables has no effect on the Village's enforcement of the provisions of the Comprehensive Plan or the LDR. Although not identified in this part of the appeal, it is stated that since the Plat and Covenants were recorded prior to the adoption of Ordinance 2003-02, the provisions of this amendment cannot be applied to properties in this subdivision. Normally, uses and/or structures that are legally established but become noncompliant with government zoning regulations due to changes to the Code are deemed to be "nonconforming uses and/or structures." Such uses and structures under the Wellington LDR are allowed to remain as long as the use or structure are not removed or abandoned for any reason for six (6) months or more, and there are limitations on damage repair. However, Article 1, Section 1.5.1 (General) of the LDR provides "specifically" that uses and site design shown on an approved building permit, site plan, subdivision plan or land development permit will not be subject to the provisions for any information clearly shown. This exemption applies as long as the above documents remain valid/active. The purpose of this provision is to protect the ability of property owners to keep or replace such uses and structures that were in place and active when the Wellington LDR was adopted (2000). Equestrian uses are not shown anywhere on a site plan, subdivision plan or land development permit for Paddock Park 1. Covenants are not "plans" or permits by any stretch of the imagination. Also Covenants are not "development orders," partially because they are not issued by the Village and cannot be enforced by the Village. In addition, if horses were once kept on the property, they were not there because of a development order, and the activity was discontinued long before the current owner acquired the property. Further, it should be noted that if there ever was a stable on the subject property and it was placed there in conformance with a building permit, that permit and its certificate of occupancy are no longer valid development orders because the alleged improvements were removed by a previous owner long before the current owner acquired the property. The appellant has told us that there was a stable on the property which was damaged extensively by a Hurricane in approximately 2007 or 2008 and the owner at the time elected to remove it and not replace it. Therefore, whatever development order may have existed (building permit or certificate of occupancy) is no longer valid.

- Challenge: Article 6, Section 6.4.4.67 (Supplementary Standards): The appeal states that this provision of the Code should not apply because it was in the County Code before Wellington was incorporated and remains in the Wellington LDR today and before the Code Sections noted above were adopted horses were being allowed in Paddock Park 1.

Response: It has been established that Palm Beach County allowed horses to be kept on properties located within this subdivision before Wellington was incorporated. Staff believes that this allowance was not supported by the Code at that time and it is not supported by the Wellington Code today. In short, we believe that the Code was not properly applied to this subdivision. The Code designates permitted uses (allowed uses, conditional uses and special uses) in one of 3 use matrixes (standard zoning district, planned districts and the EOZD). In this case, the matrix that applies is the planned district matrix, which is Table 6.8-2 of the LDR (attached as Exhibit C). The keeping of horses and other livestock is considered a bona fide agricultural use. A review of the matrix shows that bona fide agricultural uses are not permitted in PUD's (the property lies within the Wellington PUD). It

should be noted that Article 6, Section 6.4.3.E provides that uses not identified in a particular district as a permitted use, a conditional use or Special use, are not allowed in such district. Clearly, equestrian uses are not permitted by the Code on the subject property. If the property were located within the EOZD the use matrix that would govern land use would be Table C in Sec. 6.10.7.A, which would allow the keeping of horses and the construction of stables. That land use matrix would supersede the prohibition of the use in Table 6.8-2 because Section 6.10.B.2 of the EOZD and Section 3 of its adopting Ordinance which both provide that where there is a conflict between the EOZD provisions and any other Section of the Code, the EOZD provisions supersede for lands within the EOZD.

- **Challenge:** Article 1, Section 1.5.1 (General). The appellant argues that the Plat and Covenants for Paddock Park 1 are valid development orders that remain in effect today and therefore any property owner within the Plat is entitled to have horses and stables.

Response: This challenge was fully addressed to in staff's responses under the challenge to our interpretation of Article 6, Section 6.4.4.104 and 105, above. Rather than repeating that response, we direct you to that response. However, to summarize, there is no standing development order on the subject property upon which the appellant could rely to take advantage of in order to attempt of the Code provision in question. Whatever development order may have existed (building permit or certificate of occupancy) is no longer valid.

STAFF RECOMMENDATION:

Staff recommends that the PZAB find the interpretations of the provisions of Article 6, Section 6.10 (EOZD), Article 6, Section 6.4.4.104 and 105 (Supplementary Standards), Article 6, Section 6.4.4.67 (Supplementary Standards), and Article 1, Section 1.5.1 (General) are correct based on substantial competent evidence provided in the interpretation letter written by Planning, Zoning & Building Director, Robert E. Basehart on July 14, 2017, on the information and conclusions provided in the staff report for the subject appeals and on the testimony provided at the hearing conducted for this matter. Therefore, the appeals should be rejected.