

MINUTES

REGULAR MEETING OF THE WELLINGTON VILLAGE COUNCIL

**Wellington Village Hall
12300 Forest Hill Blvd
Wellington, FL 33414**

**Tuesday, November 13, 2018
7:00 p.m.**

Pursuant to the foregoing notice, a Regular Meeting of the Wellington Council was held on Tuesday, November 13, 2018, commencing at 7:00 p.m. at Wellington Village Hall, 12300 Forest Hill Boulevard, Wellington, FL 33414.

Council Members present: Anne Gerwig, Mayor; Michael Drahos, Vice Mayor; John T. McGovern, Councilman; Michael J. Napoleone, Councilman; and Tanya Siskind, Councilwoman.

Advisors to the Council: Paul Schofield, Manager; Laurie Cohen, Attorney; Jim Barnes, Assistant Manager; Tanya Quickel, Director of Administrative and Financial Services; and Chevelle D. Nubin, Village Clerk.

1. **CALL TO ORDER** - Mayor Gerwig called the meeting to order at 7:00 p.m.
2. **PLEDGE OF ALLEGIANCE** - Mayor Gerwig led the Pledge of Allegiance.
3. **INVOCATION** – Pastor Josh Mauney, New Sound Church, Wellington delivered the invocation.
4. **APPROVAL OF AGENDA**

Mr. Schofield indicated staff recommended approval of the Agenda as amended:

1) Add to Presentations and Proclamations as Item 5A “Proclamation of the Village Council of Wellington, Florida Recognizing Bruce A. Delaney on His Retirement in November of 2018.”

A motion was made by Councilman McGovern, seconded by Councilwoman Siskind, and unanimously passed (5-0), to approve the Agenda as amended.

5. PRESENTATIONS AND PROCLAMATIONS

- A. PROCLAMATION OF THE VILLAGE COUNCIL OF WELLINGTON,
FLORIDA RECOGNIZING BRUCE A. DELANEY ON HIS RETIREMENT
IN NOVEMBER OF 2018

Mr. Schofield introduced the item. Ms. Nubin read the proclamation.

Mr. Delaney thanked Council and staff for the acknowledgment and recognition.

Council and staff congratulated Mr. Delaney on his retirement and thanked him for his many years of service with the Village of Wellington.

Mr. Schofield indicated a celebration will be held for Mr. Delaney. He said he will provide Council with the date, as he would like them to attend.

6. CONSENT AGENDA

- A. 18-2495** MINUTES OF THE REGULAR WELLINGTON COUNCIL MEETINGS OF SEPTEMBER 11, 2018 AND SEPTEMBER 25, 2018
- B. 18-2296** AUTHORIZATION TO RENEW AN EXISTING AGREEMENT FOR LOBBYING SERVICES
- C. 18-2299** AUTHORIZATION TO: 1) AWARD A TASK ORDER TO PROVIDE HYDROGEOLOGIC DESIGN AND CONSTRUCTION PHASE SERVICES; AND 2) AWARD A TASK ORDER FOR THE REHABILITATION OF SURFICIAL AQUIFER WELLS
- D. 18-2309** AUTHORIZATION TO DISPOSE OF SURPLUS TANGIBLE PERSONAL PROPERTY
- E. 18-2324** AUTHORIZATION TO AWARD A CONTRACT FOR THE VILLAGE PARK CONCESSION STAND DOOR REPLACEMENT PROJECT
- F. 18-2326** AUTHORIZATION TO AWARD A TASK ORDER, TO PROVIDE ENGINEERING CONSULTING SERVICES, FOR UPDATING THE UTILITY WATER SYSTEM GIS DATABASE
- G. 18-2489** AUTHORIZATION TO UTILIZE AN EXISTING PUBLIC WORKS CONTRACT FOR THE FOREST HILL BOULEVARD/C-8 CANAL DRAINAGE IMPROVEMENT PROJECT
- H. 18-2469** (1) AUTHORIZATION TO UTILIZE MULTIPLE CONTRACTS FOR THE PURCHASE OF INFORMATION TECHNOLOGY SYSTEMS EQUIPMENT; AND (2) AUTHORIZATION TO ENTER INTO A LEASE AGREEMENT TO REPLACE AN EXISTING AS400 SERVER
- I. 18-2473** RESOLUTION NO. R2018-62 (DROWNING PREVENTION COALITION "BUCKS" CERTIFICATE PROGRAM)

A RESOLUTION OF WELLINGTON, FLORIDA'S COUNCIL APPROVING AND AUTHORIZING THE MAYOR AND CLERK TO EXECUTE AN INTERLOCAL AGREEMENT WITH THE DROWNING PREVENTION COALITION OF PALM BEACH COUNTY TO PROVIDE FOR VOUCHERS FOR FREE SWIMMING LESSONS UNDER THE "BUCK" PROGRAM FOR FISCAL YEAR 2018-2019; AND PROVIDING AN EFFECTIVE DATE.

- J. 18-2493** RESOLUTION NO. R2018-65 (WELLINGTON GREEN MUPD B REPLAT OF TRACT 2 AND CIVIC TRACT)
- A RESOLUTION OF WELLINGTON, FLORIDA'S COUNCIL ACCEPTING AND APPROVING THE WELLINGTON GREEN MUPD REPLAT OF TRACT 2 AND CIVIC TRACT LYING IN SECTION 13, TOWNSHIP 44 SOUTH, RANGE 41 EAST, VILLAGE OF WELLINGTON, PALM BEACH COUNTY, FLORIDA, BEING A REPLAT OF CIVIC TRACT, WELLINGTON GREEN, A MUPD/PUD, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 87, PAGES 81 THROUGH 90 AND TRACT 2 OF WELLINGTON GREEN, A MUPD/PUD, A REPLAT OF TRACT B, ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 110, PAGES 183 THROUGH 188 BOTH OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.
- K. 18-2494** RESOLUTION NO. R2018-66 (AGREEMENT WITH THE FLORIDA DEPARTMENT OF CORRECTIONS FOR THE PROVISION OF INMATE LABOR FOR MAINTENANCE OF THE WELLINGTON ENVIRONMENTAL PRESERVE AT THE MARJORY STONEMAN DOUGLAS EVERGLADES HABITAT)
- A RESOLUTION OF WELLINGTON, FLORIDA'S COUNCIL APPROVING AND AUTHORIZING THE MANAGER OR DESIGNEE TO EXECUTE THE CONTRACT WITH THE FLORIDA DEPARTMENT OF CORRECTIONS TO PROVIDE FOR THE USE OF INMATE LABOR IN WORK PROGRAMS WITHIN THE WELLINGTON ENVIRONMENTAL PRESERVE AT THE MARJORY STONEMAN DOUGLAS EVERGLADES HABITAT; AND PROVIDING AN EFFECTIVE DATE.
- L. 18-2490** RESOLUTION NO. R2018-64 (FDOT HIGHWAY MAINTENANCE MEMORANDUM OF AGREEMENT)
- A RESOLUTION OF WELLINGTON, FLORIDA'S COUNCIL APPROVING THE HIGHWAY MAINTENANCE MEMORANDUM OF AGREEMENT BETWEEN THE VILLAGE OF WELLINGTON AND STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION FOR THE CONSTRUCTION OF CERTAIN IMPROVEMENTS MORE PARTICULARLY DESCRIBED AS FINANCIAL PROJECT ID 436307-1, A PORTION OF WHICH INCLUDES FOREST HILL BOULEVARD; AND PROVIDING AN EFFECTIVE DATE.

Mr. Schofield indicated no public comment cards were received for the Consent Agenda. He stated staff recommended approval of the Consent Agenda as presented.

A motion was made by Councilman Napoleone, seconded by Vice Mayor Drahos, and unanimously passed (5-0), to approve the Consent Agenda as presented.

Mr. Schofield indicated no public comment cards were received for the other agenda items.

7. PUBLIC HEARINGS

A. 18-2483 RESOLUTION NO. R2018-63 (EQUESTRIAN VILLAGE SEASONAL EQUESTRIAN PERMIT 2018/2019)

A RESOLUTION OF WELLINGTON, FLORIDA'S COUNCIL APPROVING A SEASONAL EQUESTRIAN USE PERMIT FOR THE GLOBAL DRESSAGE COMPLEX, AKA EQUESTRIAN VILLAGE, AT 13466 SOUTH SHORE BOULEVARD FOR AN EQUESTRIAN SHOW USE FROM DECEMBER 1, 2018 TO APRIL 30, 2019; AND PROVIDING AN EFFECTIVE DATE.

Mr. Schofield introduced the item. Ms. Nubin read the resolution by title.

Mr. Bob Basehart stated this was a seasonal permit for the 2018/2019 equestrian season for the Equestrian Village site, also referred to as Global Dressage. He said this was the fifth year in a row that this permit has been sought. He indicated the permit this year is basically the same as last year's.

Ms. Cramer stated the site is approximately 60 acres and located on the northeast corner of Pierson and South Shore. She showed Council the site plan for the seasonal permit, which is identical to the permit that has been issued since 2011. She stated in 2013, the site was approved for a Commercial Equestrian Arena (CEA) use. She said part of that approval required the applicant to construct several onsite and offsite improvements. She stated, since that time, several legislative extensions have been put into effect by the applicant based on state of emergencies for the state. She said the applicant will not be able to take beneficial use of the Commercial Equestrian Arena until those onsite and offsite improvements are satisfied, which is why they need a seasonal permit this year. She indicated the event dates went from 71 to 65, as Gladiator polo is being relocated to the International Polo Club (IPC). She said, otherwise, the events, times and hours of operation are the same. She stated nothing has been added to or removed from the permit, except for those dates.

Mayor Gerwig asked about the onsite improvements that have not been done. Ms. Cramer stated, looking at the aerial, one condition is for the path along the north boundary in the grassy area to be turned into an access point. She said it does not necessarily need to be paved, as it could be shell rock, but it is to create the circulation throughout the site for the spectators, exhibitors and potentially emergency services.

Mayor Gerwig stated emergency services can get through as it is, but the Village is requiring the applicant to put in some kind of road base at least onsite. Ms. Cramer said that was correct.

Mayor Gerwig asked about the offsite improvements that have not been done. Ms. Cramer stated the applicant is required to do turn lane improvements at the intersection of South Shore and Pierson. She indicated part of that condition had to do with the canal to the south, which has been taken care of along with the horse crossing along Pierson. She said the applicant has partially met the condition.

Public Hearing

A motion was made by Councilman Napoleone, seconded by Vice Mayor Drahos, and unanimously passed (5-0), to open the Public Hearing.

Ms. Cohen administered the oath to those who wished to speak on this item.

Ex-parte Communications

Councilman Napoleone: Councilman Napoleone disclosed he met with Mr. Daniel Rosenbaum, Mr. Michael Stone, and Mr. Dean Tierney to discuss the application.

Vice Mayor Drahos: Vice Mayor Drahos disclosed he met with Mr. Michael Stone and Mr. Dean Tierney to discuss the application.

Mayor Gerwig: Mayor Gerwig disclosed she met with Mr. Rosenbaum six weeks ago about the application and with Mr. Dean Tierney and Mr. Michael Stone more recently about the application. She said she spoke with Mr. Jim Moore today to discuss the application.

Councilman McGovern: Councilman McGovern disclosed he met with Mr. Daniel Rosenbaum six or seven weeks ago, before this application was filed.

Councilwoman Siskind: Councilwoman Siskind stated she spoke with Mr. Michael Stone and Mr. Dean Tierney about one week ago.

Ms. Cohen asked if there was any reason to believe that Council could not be fair and impartial about this application. The Council members indicated they could be fair and impartial.

Mr. Basehart stated, in the event Council chooses to approve this application, staff has recommended 29 conditions of approval. Mayor Gerwig indicated those conditions were listed on page 257. She said they were the same conditions the applicant had last year.

Mr. Daniel Rosenbaum stated he was there on the special use permit application for Equestrian Village. He said the applicant would like to do what Ms. Cramer mentioned to Council. He stated they will have all of the shows the applicant has held for dressage for the last six years, except Gladiator polo is being moved to IPC this year.

Mr. Rosenbaum stated there are a lot of moving parts right now. He said one involves an appeal of a three-week trial the applicant had last year with regard to some neighbors who had objections to Equestrian Village and sought to raise the structures. In addition, with regard to the equestrian industry, the applicant is seeking to restructure to the extent they can. He stated the applicant has been trying to get a hotel zoned for the last 1.5 to 2 years. He said the applicant has to work out the economics of this entire matter, including IPC, which they purchased in April 2016.

Mr. Rosenbaum stated the applicant is trying to reconfigure the best sites and locations for the Village, traffic and uses involved, in addition to working out the economic details that go into running an equestrian industry. He said the 8,000 or 10,000 people there are not paying money to come in. He stated the applicant asks that Council approve the staff recommendation. He said he will address the one item relating to a bond if need be.

Councilman McGovern asked Mr. Rosenbaum to address the bond item now. Mr. Rosenbaum stated he looked at that issue. He said it would not be permissible to put that condition on a temporary use. He stated it would be disproportionate under the Koontz case and several other cases.

Mr. Rosenbaum stated the applicant has made some of the improvements with the most significant being the Pierson Road improvements. He said it is hard to put \$1 million into something when the applicant is trying to make decisions with pending litigation. He indicated the original lawsuit was filed in 2013 and not tried until December 2017. He stated the appeal has now been taken up to the Fourth District Court of Appeal and the initial brief has not yet been filed by the appellants or the opposing parties.

Mr. Rosenbaum stated these are long fought battles. He said the relief request is to not permit Equestrian Village to be used for the intended purposes the applicant believes it should be. He stated the opposition argues that it is part of Palm Beach Polo and that it is not permitted to have the uses the applicant has on the property. He said the applicant hopes to close out a lot of the moving parts and that the appeal will be concluded in 2019. He stated they do not control the process and they can only take so many extensions.

Councilman McGovern asked if Mr. Rosenbaum has agreed to any extensions in that appeal or if he intends to agree to any extensions. Mr. Rosenbaum stated they have not agreed to any extensions. He said if he was asked by the appellant to agree, and there was a reasonable basis for it, he would. He stated, as an attorney, he has an obligation to treat his opposition with respect. He indicated he has not been asked to agree to an extension at this point, as he thought the brief was due within the next two weeks.

Ms. Cohen stated she slightly disagreed with Mr. Rosenbaum. She said she did not know that it would be characterized as an exaction under the Koontz case. She stated the Village code treats special use permits a bit differently and expressly says that one cannot construct any permanent structures as part of a special use permit. She explained, in looking at the condition if Council were to impose it, while technically it is not an improvement, because the Village is just requiring the posting of a bond, she thinks it is close enough that it could run afoul of the Village code. She said she did not think it was appropriate to place that type of a condition on a temporary use permit, especially where the applicant has taken advantage of a legal right to an extension they are entitled to.

Councilman McGovern asked if Ms. Cohen had fully researched this issue and if this was her full and final opinion. Ms. Cohen indicated her opinion is that it would be inappropriate under the facts of this case to require the bond to be posted as part of this special use permit. She stated Council has the ability to deny the special use permit, because it is quasi-judicial. She said if they feel the conditions staff has crafted are not appropriate, that is Council's prerogative and they will have to deal with the fallout from that decision. She stated to condition a bond on a special use permit at the same time the applicant has taken advantage of a government declaration of emergency, she thinks raises some issues and also places a permanent type of a requirement on a temporary use.

Vice Mayor Drahos clarified the litigation Mr. Rosenbaum is referring to, where his client prevailed on all counts, is now being appealed by the applicant's opponent. Vice Mayor Drahos congratulated Mr. Rosenbaum for succeeding in that trial; however, that in and of itself, was not entirely persuasive as being a reason for not being able to get this improvement done. Vice Mayor Drahos stated he would like Ms. Cohen to explain to the residents the exemption being discussed and how it effects whether or not the Village can enforce this applicant to build the entrance way, roadway or improvement.

Ms. Cohen stated when a state of emergency is declared in a given area or statewide, it allows the affected parties/developers in that area to get an extension on a development order

approval. She said, in this case, the applicant had an approval of the compatibility determination and the master plan amendment for the use of the commercial arena.

Ms. Cohen indicated there have been a number of declarations of emergency. She said she personally thinks that Palm Beach County was not necessarily affected by the Zika virus, but her opinion is irrelevant because under the law the applicant is entitled to take an extension. She stated this is declared by the governor and the Village does not have a choice. She said the applicant asked for and is entitled to the extension. She stated it is nothing the Village can either grant or deny. She said they are currently proceeding under that extension.

Ms. Cohen stated under that same law, the Village does not have to give the applicant, what has been called, beneficial use of the property. She said the applicant currently does not have their permanent compatibility and master plan amendment, because they have not constructed the improvements that were required as part of that approval. She stated that is why the applicant is here for their special use permit every year.

Ms. Cohen stated technically requiring a bond for the construction of an offsite improvement like the turning lane is not actually requiring a permanent improvement. She said it is so close, she thinks it could be construed that way. She stated she also thinks the Village code expressly provides that there can be no permanent improvements associated with a temporary use like a special use permit. She said she thinks that it is subject to challenge and that it would be inadvisable to impose that condition.

Vice Mayor Drahos asked if the governor's declaration had a timeframe as to when it would expire. Ms. Cohen stated it was during the period of the emergency and then for six months after that. She said she believed Ms. Cramer calculated those dates and could give Council that information.

Mr. Schofield stated he did not want to see Council's ability to apply a condition in the future completely forestalled. He said he agreed they should not at this juncture be requiring the bond, because of the extensions. He stated as long as Council is under those auspices, the applicant will not have to construct the improvement and will not get complete beneficial use. He explained if the totality of the circumstances, the life of the event, the impacts, and all things taken together, require that construction, he thought Council would have the ability to assess that in the future. He said he did not think Council was forestalled forever, especially once they get out from under the governor's extensions. He stated every applicant is legally entitled to take advantage of those extensions. He said he was not sure about the current opioid extension.

Mr. Schofield indicated Mayor Gerwig has asked and staff will be presenting to Council a position to the state indicating that emergency orders need to have some actual application to the development order being extended. He said he wanted it to be clear that at this juncture, based on the notice, where they are now and the need for the equestrian season to move on, it is something that should be addressed with the applicant during the period of this permit.

Councilman Napoleone thanked Mr. Schofield for that comment, as it was going to be his question. He stated based upon what he is hearing from Ms. Cohen, he is not prepared to say that a bond needs to be posted for approval of this permit today. He said it is something he would like to look at and strongly consider for next year, because this comes back to Council year after year. He stated they could be done with this process once the onsite and offsite improvements are done. He said the applicant would have full use of the property and they

could do what they wanted. He stated he would prefer seeing a bit more cooperation from the applicant voluntarily in working towards a resolution between now and next season, so they do not have to come back next year.

Mayor Gerwig stated she sits on the Land Use and Economic Committee for the League of Cities. She indicated the City of West Palm Beach has had one land development extension for ten years, because of the state of emergencies declared by the governor. She stated there is a question of whether or not there is a legal nexus. She said the City of St. Augustine claims there is and she thinks they are in litigation over that. She stated she did not want the Village of Wellington to engage in that right now on something like this. She said this is problematic for every city, as it is out of their control. She stated the Committee is asking for some tweaking of the law. She said they would not be rewriting anything, but the Committee is requesting some kind of nexus to the impact.

Mr. Schofield explained that a DOT opinion says the extensions are cumulative, but that is not supported. He said no other agency has taken that position. He stated he did not think anyone could fairly read the emergency declaration act and say that. Ms. Cohen said her office has looked at it as well, and they believe it runs concurrently.

Mayor Gerwig stated the six months starts whenever the opioid crisis ends. She said they do not see a nexus, but the Village does not have control over that. She thought, if a nexus is required in the future, it would benefit all villages and municipalities.

Councilwoman Siskind asked Ms. Cramer for the timeline on the extension. Ms. Cramer stated the opioid epidemic is the most current extension and it has not yet terminated. She said staff cannot calculate what the new condition of approval date will be. She indicated multiple extensions in the past have overlapped, so staff pushed those dates out accordingly and ran them concurrently to get the latest possible date for the longest emergency. She stated she will have a final date for Council as soon as the opioid extension ends.

Councilman McGovern stated when the governor issues extensions, it is a choice to take advantage of them. Ms. Cohen said that was correct. She stated once someone requests the extension, they are entitled to it.

Councilman McGovern stated this applicant is not required to ask for this extension based on the opioid crisis. Ms. Cohen said that was correct. She indicated the applicant asked for the extension in writing and they are entitled to it.

Mayor Gerwig stated the attorneys for the League of Cities have said that the extension does not have to be requested, as it is automatic. She said that is in question. Ms. Cohen stated her reading of the statute differs.

Councilman Napoleone stated the opioid crisis is not preventing the work from being done. He said it is just a reason to get an extension on the time to complete the work.

Councilman McGovern asked how many extensions have been asked for relative to this property. Ms. Cramer stated she can get Council a report or timeline. She said staff did a table last year that has that information.

Ms. Cramer showed Council a list of extensions with the longest timeframes. She said she believes there have been three or four different state of emergencies for multiple projects. She

indicated staff has four or five letters for different sites, including PBIEC, Equestrian Village, Wellington Professional Offices, etc. She stated extensions were submitted to the Village for those sites with date specific conditions. She said she could get Council a complete list.

Vice Mayor Drahos asked if the extension automatically renews every time a hurricane comes and the governor declares a state of emergency. Ms. Cramer stated it does if it is for the entire state, as some declarations are specific to counties. She said staff will not issue a new date for the improvements to be completed by, if the state of emergency does not affect Palm Beach County.

Councilman McGovern stated this was the seventh time this or another Council has issued a special use permit to this applicant. Ms. Cramer stated the first special use permit was approved in 2011 and it has been issued every year since then. She indicated the Village issued one permit throughout the time of the Commercial Equestrian Arena. She said there may have been one year when a permit was not required, but that was prior to her time with this project. She stated she believed when the applicant received their original CEA approval, they did not need a permit. She said once it was revoked and the applicant started the process again, they were required to get a permit. Mr. Basehart noted that one year was the 2013-2014 season.

Vice Mayor Drahos asked if the Village had other applications for improvements on this property. He asked, in considering those applications in the future, if there is a pending condition or improvement the Village has been trying to enforce for years, if the applicant will get that improvement unless this condition is done first.

Ms. Cohen thought it would depend on the status of the state of emergency. She explained a declaration of emergency affects not only old development orders, but any new ones as well. She stated it places communities in a difficult spot, as it certainly favors developers. She said that is the state law at this point.

Mr. Schofield stated if Council issues a development order, they can attach any conditions necessary, anything the Village requires to meet the code or to mitigate unique circumstances, to the approval. He said an emergency declaration does not eliminate the conditions, as it simply extends the timeframe in which the development order would expire. He stated the Village permits come with two-year expiration dates, so the applicant either has to do something prior to the expiration or come back and apply. He said the emergency declarations extend the expiration date and do not change how the conditions will be applied.

Ms. Cohen stated the Council would have to apply conditions that were proportionate to what was being requested. She said if they start exacting things that are not proportionate, then they get into the Koontz situation Mr. Rosenbaum was referring to earlier.

Councilman Napoleone thought most of Council was struggling with wanting to issue the special use permit, but also wanting the applicant to get the improvements done, so they do not have to come back again. He stated their only alternatives tonight were either to issue the permit and let the applicant hold the event or not issue the permit and not let the event happen. He said it benefits the Village to let the event happen.

Councilman Napoleone stated Council was kind of in a box every year with the same problem. He said they need to find a way to get out of this box, because he did not think any of them wanted to have this back here again next year. He stated he knows the Council has said that in

prior years, but it is still true and it becomes increasingly true the more times they have to say it. He said he would like to work out a resolution between now and this time next year, so they are not doing this again.

Mr. Rosenbaum stated the applicant understands the position the Council is in and some of the frustration they are feeling. He said part of the answer may be the reconfiguration of the International Polo Club (IPC), which they have been working on. He stated they intend to move some shows to IPC, which would be a less intense use of Equestrian Village. He said how this is all going to layout is also the subject of some other things that Mr. Sexton is working on with staff. He stated they were trying to come up with an answer. He said they would like to get this resolved this year, so the applicant does not have to come back and put this in front of Council again.

Mr. Rosenbaum indicated the term of the special use permit is from December 1st to April 30th.

Councilman McGovern asked, regarding conditions #4 and #5, if attendance counts were supposed to be provided to the Village weekly or at the end of the season. Ms. Cramer stated the applicant is supposed to take the counts weekly and could submit them to the Village monthly. She said in the past, on the special use permits, the Village has taken the counts at the end of the season. She stated she believed the CEA approval had the same condition regarding attendance counts, which also would have been submitted at the end of the season, at least for the first year. She indicated there were some other monitoring conditions related to that as well.

Councilman McGovern stated the Staff Report talks about multiple attempts in requesting the counts and that the Village did not get them until a week or two ago. Ms. Cramer said the Village did not receive the counts from last season until staff requested them this year.

Councilman McGovern asked Mr. Rosenbaum why that happened. Mr. Rosenbaum stated he would have to defer to Mr. Sexton. Mr. Sexton said he believed it was an oversight, primarily because much of the staff at Equestrian Sport Productions is out of the state during the summer.

Councilman McGovern stated the counts are supposed to be given to the Village monthly. Mr. Sexton stated he did not recall them ever being given monthly, as it has always been done at the end of the season. He said it is something they certainly mark and they can make the monthly submittals to the Village.

Councilwoman Siskind asked about the Village doing some road improvements in the same location and if they were trying to combine the projects to save from having to rip up any work that was done. She asked where the Village was with that, assuming the applicant does not complete their work.

Mr. Schofield stated the two projects will be done together. He explained the applicant has a certified cost estimate of \$970,000 from a construction firm two years ago. He said if the applicant provides that to the Village, staff will recommend unconditionally granting that condition of their arena permit and then the Village will do the work together at one time. He stated it makes no sense for the Village to do their project and then have the applicant rip it up. He said this will not come back to Council until it is ready to proceed as a single project.

Mayor Gerwig stated the applicant would provide their funding and the Village would add to its

funding and then the Village would do the work themselves.

Mr. Schofield stated the only component Council may see separately is the project to enlarge the culvert under South Shore and the C-23. He said the Village can do that without touching any of the future work. He stated staff was not going to propose any roadway work that has to be torn up by either party.

Mayor Gerwig stated she did not mind having the applicant come back to have the conversation. She said global dressage is an important part of the community. She stated she did not want to leave the impression that Council did not want the applicant to come back. She said they would just prefer to work together to get this done, so the improvements can be made for the community.

Councilman McGovern stated he agreed with Mayor Gerwig. He said he intended to vote for this tonight, as he did in 2015, 2016 and 2017. He stated the Council wants to get this done, as they have said every year. He indicated he does not intend to have this go on forever.

Councilman McGovern asked Ms. Cohen's office to research, if this comes back next year, whether or not the Council can apply that bond condition. He stated, at some point in time, if they are headed in that direction, he would like to see a full memorandum from Ms. Cohen's office discussing how the bond condition could be placed on the next special use permit or how the bond condition can be brought forward in some way to bring this to conclusion. He said the Village is trying to do its own improvements in that area and that is being delayed by the fact that these projects should be done in conjunction.

Councilman McGovern stated, secondly, in the light of the fact that there has been some issues with trying to get the counts and the like, he would like to add condition #30. He said he would like an interim report from the applicant or counsel to the applicant and the Village planning staff sometime in April, before the special use permit expires. He stated he wanted to know how the permit is operating and working, and he would like to hear from the applicant or the applicant's representatives as to where they are on the items they have discussed. He said he did not want to come back a November from now in the same situation they have been since 2015, where there is an appeal, there is a court case, etc. He stated he would like to hear about this before Council is on the verge of passing/not passing this permit and perhaps not having this important event happen in their community.

Mayor Gerwig suggested tweaking the condition that requires the counts to be provided. Councilman McGovern stated he would be happy to specify a time in conditions #4 and #5 that the counts be provided within thirty or sixty days of the month they occurred in. He said, for example, the December count could be provided by February 1st.

Councilman McGovern stated he also wanted to add a condition that required a report. He said the applicant will come back to Council before the special use permit expires to tell them how it is going and to give them an update on all of the issues Mr. Rosenbaum has laid out as to why they have had to come back for another special use permit. Mayor Gerwig indicated she thought the condition was a little vague.

Mayor Gerwig asked if there were any complaints last season about this venue. Mr. Basehart stated there were no complaints.

Mayor Gerwig asked if the Village still had a hotline for residents' complaints. Mr. Basehart

stated they still have the hotline. He said he believed they received one call when someone parked a horse trailer too close to the buffer. He said the Village called the property owner and it was taken care of the same day.

Councilman McGovern stated the Village was receiving complaints about traffic flow. Councilman Napoleone indicated some of these improvements are intended to relieve the traffic, which is why they are a condition.

Mayor Gerwig stated her question was about the use and the numbers, and if it was overwhelming to the neighborhood. She said it is what the Village is asking for with the counts.

Ms. Cramer pointed out the allowance of total people, which includes spectators and exhibitors, was topped at 3,000 for the Commercial Equestrian Arena. She said the special use permit is topped out at 1,500 people. She stated the event is less intense than what the total possible on site traffic would be for the permanent approval, which warranted the improvements to the road. She said it was geared that way, so the Village could mitigate it with PBSO.

Mayor Gerwig stated if Councilman McGovern would like to add a reporting date of February 28th, they would have a midpoint count halfway through the season. Councilman McGovern agreed that date could be added to conditions #4 and #5.

Councilman McGovern stated, in regards to condition #30, he wants an interim report in the month of April from the applicant and staff on how this is going. He said he wanted to know whether the permit is working successfully and if everything is going to according to plan. He stated he wants an update on all of the things that Mr. Rosenbaum laid out as to why the applicant is here getting the special use permit again. Councilman McGovern said he thought he would put that as a condition in the special use permit before it expires, because after that the Village has no jurisdiction to ask for it.

Ms. Cramer asked if it would acceptable to add the February 28th date to conditions #4 and #5 for the stall count and the spectator count, with the second counts being submitted at the end of season. She stated one month prior to the expiration of the permit, the Village will receive an update from the applicant as to the status of their legal concerns at that time and staff will provide Council with that status, including any calls or complaints received through the season.

Mayor Gerwig stated the Council needs to define what it is asking for. Councilman McGovern said they are asking for whether the conditions were effective, whether they are being complied with, etc.

Councilman Napoleone asked if they also wanted an update or status on the intentions regarding the onsite and offsite improvements required to be constructed. Councilman McGovern stated when Mr. Rosenbaum and/or the applicant comes back to update the Council, they can ask those questions in a public forum even if they are not part of the condition.

Mayor Gerwig indicated the Village cannot require that as long as the opioid crisis continues. She said they are in a conundrum.

Councilman McGovern stated this will allow them to have an interim discussion before next November. Mayor Gerwig said the Council was requiring Mr. Rosenbaum and Mr. Sexton or the applicant or whoever the applicant designates to come back as condition #30.

Councilman McGovern stated if the condition is agreeable to the applicant, it would have to be one of the two Council Meetings in April. Mr. Schofield asked that it be the first Council Meeting in April, as that would give them time for a follow-up meeting in season if need be.

Mayor Gerwig stated the permit is active until May 15th. Ms. Cramer said May 15th is the date to have the site cleaned and restored, as April 30th is the expiration.

There being no public comments, a motion was made by Councilman Napoleone, seconded by Councilman McGovern, and unanimously passed (5-0), to close the Public Hearing.

A motion was made by Councilman McGovern, seconded by Councilwoman Siskind, and unanimously passed (5-0) to approve Resolution No. R2018-63 (Equestrian Village Seasonal Equestrian Permit 2018/2019) as amended.

8. REGULAR AGENDA

A. 17-1618 AUTHORIZATION TO APPROVE A TASK ORDER TO PROVIDE ENGINEERING CONSULTING SERVICES FOR THE SOUTH SHORE FORCEMAIN REPLACEMENT PROJECT PHASE I

Mayor Gerwig stated this item is awarding a task order to Mock Roos and Associates and the firm that she owns one share of stock in, which is 1%, and works for has done over \$10,000 worth of work in the past 24 months with Mock Roos, so she will be recusing herself from this discussion and vote. Mayor Gerwig left the Council Chambers at this time.

Mr. Schofield introduced the item.

Ms. LaRocque stated this design work authorization will start the Phase I design for the replacement of the forcemain on South Shore Blvd. She said the project is included in the approved Utility Five Year Capital Improvement Plan and is in the budget for this year. She stated this project is part of a three-phase, \$7 million replacement at the forcemain on South Shore Blvd. She indicated it is the main trunk line within the Village, so it is a very important infrastructure for the Utility. She said they anticipate having the project completed by 2023-2024.

Councilman Napoleone noted this was not on the Consent Agenda, because of the recusal issue. He said Council discussed it at length a few weeks ago.

Mr. Schofield stated it was a planned for and budgeted project. He said Council was hearing it for the benefit of the public. He explained, if there is no request for a budget transfer, it is in the budget, the money is available, and the Village intends to do it this year.

A motion was made by Councilman Napoleone, seconded by Councilwoman Siskind, and unanimously passed (4-0), with Mayor Gerwig recused, to approve the Task Order to Provide Engineering Consulting Services for the South Shore Forcemain Replacement Project Phase I as presented.

At this point, Mayor Gerwig returned to the Council Chambers.

9. PUBLIC FORUM

No comment cards were received from the public for the Public Forum.

10. ATTORNEY'S REPORT

MS. COHEN: Ms. Cohen presented the following report:

- She stated the Village received an affirmance of the Circuit Court's final summary judgement in the enforcement case of Palm Beach Polo, Inc. and Big Blue Preserve. She said in 2014 the Village learned that Palm Beach Polo had gone into Big Blue and clear cut about 4.5 acres of the Big Blue forest. She stated that violated Judge Brunson's 2004 order, in which she ordered the property owner to preserve and enhance the Big Blue Preserve. She said the Village cited Palm Beach Polo for a code violation and also filed an action in the Circuit Court. She stated the Village obtained a temporary injunction. She said it went through discovery and ultimately concluded with the summary judgement. She stated it was appealed to the Fourth District Court of Appeal and was just affirmed.

Ms. Cohen stated, pursuant to the Court's order, Palm Beach Polo has to submit a vegetation management plan. She said she believed they have submitted one, but she did not know the status, as Mr. Flinchum may be reviewing it. She stated she was not sure if it was a sufficient plan.

Ms. Cohen stated pursuant to the code enforcement, Palm Beach Polo had to submit a restoration plan for the 4.5 acres. She said they have submitted it and the Village has accepted it. She stated Palm Beach Polo submitted a cost estimate, but they have not posted a bond for that to her knowledge.

Ms. Cohen stated, meanwhile, Council has authorized legal to move forward with the foreclosure, because of the outstanding \$6.2 million fine. She said even if they come into compliance, it does not necessarily negate the fines that have accrued. She stated her office is preparing the foreclosure and will be filing it shortly.

Ms. Cohen stated her office is also pursuing the other litigation involving Palm Beach Polo. She said they will proceed with them as expeditiously as possible.

Ms. Cohen indicated four pending code enforcement matters for fine certifications are on the agenda for Thursday. She said the Dunes Course cases, which involve the Polo West landscaping issue, the restroom trailer on Palm Beach Polo property and the North Course landscaping issue, will go before the magistrate. She stated she hopes the magistrate enters a fine, because the violations have not been corrected. She said those fines will then begin to accrue.

Ms. Cohen stated the Stribling berm code enforcement case, not the Circuit Court case, is on appeal. She said the Village filed its answer brief today. She stated the Village has served a 57.105 motion, which is a motion to seek fees for meritless litigation. She said legal staff does not believe that the appeal has merit. She stated if it is not withdrawn, they will go forward with filing it.

Ms. Cohen stated this updates Council on the numerous Palm Beach Polo cases and Polo West cases and lets them know that legal staff is moving as aggressively as they can.

Ms. Cohen stated with the Flying Cow Ranch application, the Village received formal notice from the property owner that they withdrew their authorization for the contract purchaser to move forward with the application. She said they are not processing that application at this point. She stated there was an e-mail threatening litigation, but she will let Council know if that materializes. She said she did not believe there would be any basis for that type of litigation, especially since their code requires the consent of the property owner and the bankruptcy court. She stated the property owner was told they could pursue any breach remedies that occurred prior to the bankruptcy that they chose. She said she did not think any litigation in that regard would have merit.

Councilman McGovern asked if anything else has happened in the bankruptcy court. Ms. Cohen stated there was a motion to convert it to a Chapter 7. She explained because there is a pending appeal of the court's order requiring them to either affirm or reject the executory contract, the bankruptcy court declined to convert it because it would essentially deprive them of their appeal. She stated the Judge is willing to let the appeal go through the process and then without prejudice raise the issue again after the appeal. Ms. Cohen said her understanding, in talking with some of the attorneys, is that the bankruptcy court appeals proceed quicker than the regular circuit or appellate court appeals. She stated she did not expect it to take much longer for the issue to be decided. She said it was appealed to the Federal District Court.

11. MANAGER'S REPORT

MR. SCHOFIELD: Mr. Schofield presented the following report:

- He indicated no agenda items are scheduled to be heard at the November 27, 2018 Council Meeting and suggested that it be cancelled. Council consensus was to cancel the meeting.
- He indicated the next Regular Council Meeting will be held on Monday, December 11, 2018, at 7:00 p.m. in the Council Chambers.
- He stated the Village offices will close at noon on Wednesday, November 21, 2018 in observance of the Thanksgiving Day holiday and reopen on Monday, November 26, 2018. He said certain Village facilities will be closed and more information is listed on the website. He stated the parks themselves will be open from sunrise to sunset.

12. COUNCIL REPORTS

COUNCILMAN NAPOLEONE: Councilman Napoleone presented the following report:

- He apologized for missing the Veterans Day parade, as he was attending a college reunion in Gainesville. He stated it looked like it was a great event and well attended as always.
- He wished everyone a safe and Happy Thanksgiving.

VICE MAYOR DRAHOS: Vice Mayor Drahos presented the following report:

- Vice Mayor Drahos thanked Ms. Cohen for her update regarding the Polo West and Polo North issues.

COUNCILMAN MCGOVERN: Councilman McGovern presented the following report:

- He stated the Read for the Record effort was very strong and enjoyable.
- He thanked everyone for coming to the Veterans Day festivities in the Village. He said he thought it was one of the most meaningful events done in the community every year.
- He thanked the Parks & Recreation Department for the “Glow in the Dark” Lakeside Event, as it was unique and a lot of fun.
- He thanked everyone who voted in the election and particularly at the Wellington Library. He indicated it was one of the most voted at sites for early voting.
- He wished everyone a Happy Thanksgiving.

COUNCILWOMAN SISKIND: Councilwoman Siskind presented the following report:

- She stated she had no comments this evening.

MAYOR GERWIG: Mayor Gerwig presented the following report:

- She stated she participated in early voting at the Wellington Library. She said it was a very efficient and organized process. She stated she appreciated everyone getting out and voting. She commented on the close margins in Palm Beach County and the State.
- She asked about the public input meetings for the waterfront project. Mr. Schofield stated the meetings will probably happen in December and January. He indicated they retained Urban Design to help prepare for those meetings. He stated there will be some community outreach prior to the meetings, because the Village needs to talk to the community organizations that will not be well represented at the meetings. He said they also need to talk to both Chambers.
- She stated, since Equestrian Sport Productions was there this evening, she wanted to say she thought the Village was headed for a very busy equestrian season. She said she was hoping they could work together and have a very successful season.
- She indicated she was going to Orlando tomorrow to attend the Florida League of Cities (FLC) legislative committee meetings. She thanked the residents for voting. She stated defeating Amendment 1 was a goal for the League of Cities. She indicated Amendment 1 was the only amendment on the ballot that did not pass. She stated she did not think that anyone of them actually believed they could defeat that amendment. She thought it was done by explaining the merits, the tax shift, the winners and losers. She thanked the League of Cities for having a very organized front and for working with the County groups. She thought the defeat indicated if Tallahassee wants to give a tax break to the residents, they should take it out of their own coffers.

Councilman McGovern thought it also demonstrated, particularly when every other amendment passed, when local municipal and county governments state-wide work to do something, they can achieve it and the citizenry will get behind the leaders they know. He said this Council says that a lot from this dais and it is a fact.

Mayor Gerwig thought the deciding factor was that the residents know the money the Village collects from them is for the services the residents want and support. She stated defeating Amendment 1 was just another way for the residents to give the elected officials that vote of confidence. She thought the defeat would make it easier to provide the services the residents demand from the Village.

13. ADJOURNMENT

There being no further business to come before the Village Council, the meeting was adjourned at approximately 8:22 PM.

Approved:

Anne Gerwig, Mayor

Chevelle D. Nubin, Village Clerk