

MINUTES

REGULAR MEETING OF THE WELLINGTON VILLAGE COUNCIL

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

**Tuesday, November 12, 2019
7:00 p.m.**

Pursuant to the foregoing notice, a Regular Meeting of the Wellington Council was held on Tuesday, November 12, 2019, commencing at 7:00 p.m. at Wellington Village Hall, 12300 Forest Hill Boulevard, Wellington, FL 33414.

Council Members present: Anne Gerwig, Mayor; Michael J. Napoleone, Vice Mayor; John T. McGovern, Councilman; Michael Drahos, 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** – Rabbi Emeritus, Stephen Pinsky, Temple Beth Torah, Wellington, delivered the Invocation.
4. **APPROVAL OF AGENDA**

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

1. Move Public Hearings item 7C, Resolution No. R2019-25 (The Wellington PUD Master Plan Amendment - The Players Club Residences), to item 7D.
2. Move Public Hearings item 7D, Ordinance No. 2019-06 (Zoning Text Amendment - Building Height), to item 7C.

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

Mr. Schofield indicated no public comment cards were received.

5. PRESENTATIONS AND PROCLAMATIONS

There were no Presentations and Proclamations.

6. CONSENT AGENDA

- A. 18-2301** AUTHORIZATION TO: 1) AWARD A CONTRACT FOR THE NEIGHBORHOOD UTILITY REINVESTMENT (PROJECT 1); AND 2) AWARD A TASK ORDER TO PROVIDE CONSTRUCTION PHASE ENGINEERING SERVICES
- B. 19-3260** AUTHORIZATION TO AWARD A TASK ORDER TO PROVIDE ENGINEERING CONSULTING SERVICES FOR THE LIFT STATION PHASE II DESIGN
- C. 19-3274** AUTHORIZATION TO DISPOSE OF SURPLUS TANGIBLE PERSONAL PROPERTY
- D. 19-3276** AUTHORIZATION TO RENEW EXISTING CONTRACTS FOR PLANNING, ZONING AND BUILDING INSPECTION SERVICES
- E. 19-3317** AUTHORIZATION TO UTILIZE A TERM CONTRACT WITH SEMINOLE COUNTY, FLORIDA FOR HYDRANT MAINTENANCE SERVICES
- F. 19-3344** AUTHORIZATION TO AWARD GUARANTEED MAXIMUM PRICE (GMP) AMENDMENT ONE FOR THE CONSTRUCTION OF WATER TREATMENT PLANT WAREHOUSE, GENERATOR STORAGE, FIELD SERVICES BUILDING MODIFICATIONS, AND MISCELLANEOUS ARCHITECTURAL, SECURITY AND SITE IMPROVEMENTS
- G. 19-3369** AUTHORIZATION TO: 1) AWARD A TASK ORDER TO PROVIDE HYDROGEOLOGIC CONSULTING SERVICES FOR PHASE III OF THE WELLFIELD REHABILITATION PROJECT; AND 2) AWARD A TASK ORDER FOR REHABILITATION OF SURFICIAL AQUIFER WELLS
- H. 19-3372** AUTHORIZATION TO UTILIZE A FLORIDA SHERIFFS ASSOCIATION CONTRACT FOR THE PURCHASE AND DELIVERY OF TWO FIXED EMERGENCY POWER GENERATORS
- I. 19-3363** RESOLUTION NO. R2019-67 (REVISED UNIFIED PALM BEACH COUNTY LOCAL MITIGATION STRATEGY PLAN)

A RESOLUTION OF WELLINGTON, FLORIDA'S COUNCIL AUTHORIZING APPROVAL AND ADOPTION OF THE REVISED UNIFIED PALM BEACH COUNTY LOCAL MITIGATION STRATEGY PLAN AS REQUIRED BY THE DISASTER MITIGATION ACT OF 2000; AND PROVIDING AN EFFECTIVE DATE.
- J. 19-3300** RESOLUTION NO. R2019-68 (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.

Mr. Schofield stated staff recommends approval of the Consent Agenda as presented.

Mayor Gerwig indicated no public comment cards were received on the Consent Agenda.

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

Mr. Schofield stated no other public comment cards were received.

7. PUBLIC HEARINGS

- A. 19-3374** ORDINANCE NO. 2019-07 (COMPREHENSIVE PLAN AMENDMENT – FUTURE LAND USE MAP DESIGNATION FOR THE PLAYER’S CLUB RESIDENCES)

AN ORDINANCE OF WELLINGTON, FLORIDA’S COUNCIL, APPROVING A COMPREHENSIVE PLAN AMENDMENT [PETITION NUMBER 19-003 (2019-002 CPA1)] TO AMEND THE FUTURE LAND USE MAP DESIGNATION FOR CERTAIN PROPERTY KNOWN AS THE PLAYERS CLUB (F.K.A. EQUESTRIAN POLO VILLAGE AND COMPLEX OF PALM BEACH POLO AND COUNTRY CLUB), TOTALING 5.58 ACRES, MORE OR LESS, APPROXIMATELY LOCATED ON THE SOUTHWEST CORNER OF SOUTH SHORE BOULEVARD AND GREENVIEW SHORES DRIVE, AS MORE SPECIFICALLY DESCRIBED HEREIN, FROM COMMERCIAL RECREATION TO RESIDENTIAL F (8.01 DU/AC TO 12.0 DU/AC); PROVIDING A CONFLICTS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

Mr. Schofield introduced the item. He recommended having a single discussion for Item A (Ordinance No. 2019-07), Item B (Ordinance No. 2019-05), Item C (Ordinance No. 2019-06) and Item D (Resolution No. R2019-025).

Ms. Cohen asked if the applicant had any objection to combining all of the public hearing items and presentations into one item. The applicant did not object to having one discussion on all of the items.

At this time, Ms. Cohen swore in the witnesses and those individuals who would be providing testimony.

Ex Parte Communications

Mayor Gerwig: Mayor Gerwig disclosed she has spoken to the applicant and has probably spoken to some members of the public. She stated she spoke to Bill Klein. She said anyone

she spoke to was just questioning what was or was not moving forward. She stated she feels she can hear this fairly and vote fairly.

Vice Mayor Napoleone: Vice Mayor Napoleone disclosed that his ex parte communications are unchanged from the first reading. He said he has not talked to anyone since then about this and that he can be fair.

Councilman Drahos: Councilman Drahos disclosed he has not talked to anyone since the first reading.

Councilman McGovern: Councilman McGovern disclosed he has not talked to anyone since the first reading. He stated he can be fair on all of these applications.

Councilwoman Siskind: Councilwoman Siskind disclosed that her ex parte communications have not changed, as she had previously spoken to the applicant and her appointee, Jeff Roberts, to the Planning, Zoning and Adjustment Board. She stated she can be fair.

Staff

Ms. Kelly Ferraiolo with Planning and Zoning stated before Council tonight is the second reading of the Comprehensive Plan Map Amendment, Comprehensive Plan Text Amendment, and Zoning Text Amendment as well as the first and final reading of the Master Plan Amendment for The Player's Club Residences project.

Ms. Ferraiolo indicated the owner is Sperin LLC and the agent is Jon Schmidt of Schmidt Nichols.

Ms. Ferraiolo stated the applicant is requesting a Comprehensive Plan Amendment, Comprehensive Plan Text Amendment, Zoning Text Amendment and Master Plan Amendment to convert the existing Player's Club restaurant into a 50 unit multifamily condominium. She officially entered into the record Petitions 2019-003 CPA1, 2019-004 CPA, 2019-002 ZTA and 2019-003 MPA.

Ms. Ferraiolo showed Council the subject site located within the Wellington PUD. She said the Players Club is a 5.58 acre property and currently a two-story restaurant located on the corner of South Shore Boulevard and Greenview Shores Boulevard. She stated to the east is residential and Equestrian Village, to the south is Equestrian Village, and to the northwest is Wellington Professional, which is a vacant office commercial site.

Ms. Ferraiolo stated the applicant is seeking a Comprehensive Plan Map Amendment to modify the Future Land Use Map designation of the subject site from Commercial Recreation to Residential F, which is 8 to 12 dwelling units per acre.

Ms. Ferraiolo stated the applicant's request is in compliance with the comprehensive plan as summarized in the staff report. She said the applicant has provided all necessary items to review the application in accordance with the Land Development Regulations (LDR).

Ms. Ferraiolo showed Council the current and proposed future land use maps. She presented the site as commercial recreation and as residential F.

Ms. Ferraiolo stated the next application is the Comprehensive Plan Text Amendment. She said the applicant is requesting an amendment to Policy 1.3.8 of the Land Use Element of the comprehensive plan to modify the building height limitations for multifamily properties within a future land use map designation of Residential E, F, G, and H. She stated the applicant requested 72 feet; however, staff is recommending 56 feet as the maximum. She said staff also cleaned up the language throughout the policy.

Ms. Ferraiolo stated the third application is a Zoning Text Amendment (ZTA) to modify Section 6.5.8.C of the LDR relating to building height for multifamily structures within a planned development that have a future land use map designation of Residential E, F, G and H. She said along with the Comprehensive Plan Text Amendment, the applicant is requesting 72 feet, but staff is recommending 56 feet as the maximum. She stated the applicant is aware of and in agreement with this change.

Ms. Ferraiolo stated the ZTA proposes mandatory requirements to be eligible to request additional building height above 35 feet. She said the applicant must meet the following in order to be considered for the additional height: shall provide for additional setbacks; shall be within a PUD and have a Residential E, F, G and H future land use map designation; shall not be located directly adjacent to single family residential properties; shall be at least 2 acres in size; shall be within 500 linear feet of a collector road; and shall have Council approval for anything over 35 feet.

Ms. Ferraiolo stated the multifamily properties can be eligible for an additional 15% in building height if they meet additional setbacks; are approved by Council; if the area is for mechanical equipment, architectural features, common areas, or any other non-habitable uses. She said they cannot exceed the maximum building coverage limitations of 35%, which was modified from 50%. She stated the properties also have to incorporate at least three voluntary design criteria.

Ms. Ferraiolo stated staff presented seven design criteria at the last meeting and added a few more at the request of Council. She said in order for a project to be considered for the additional 15%, the applicant would have to pick at least three design criteria. She stated that would include providing parking structures other than paved areas; providing on-site amenities such as outdoor recreational benches and focal points; incorporating eco-design; providing privately improved or maintained public amenities on or contiguous to the site, such as sidewalk improvements and bus shelters; being LEED or Florida Green Building design certified of silver or higher (this criteria was modified from the last Council hearing); providing architectural features that are unique and exceed the LDR landscape enhancements. She said the new criteria that staff added since the last meeting includes: providing fee simple or for-sale units, providing housing with rents and prices available to households within 80-140% of the Villages median income, and providing relocation assistance for those displaced by the project.

Mayor Gerwig stated criterion #10 was discussed at Agenda Review. She said she had some issues with that, as she did not think it belonged in this list. She stated she agreed with providing housing with rents that are accessible.

Vice Mayor Napoleone stated he agreed, as he did not think that relocation assistance belonged in the list. He said he did not believe this criterion provided a benefit to the community at large to get the extra height.

Councilwoman Siskind stated she agreed as well. She said relocation assistance seemed like the odd item in the list.

Councilman McGovern stated he did not have a problem with criterion #10 one way or the other. He thought if they were looking at redevelopment in some multifamily communities in the Village, it may be important and useful. He said he did not think relocation assistance should necessarily entitle additional height. He stated he would defer to the rest of Council on this.

Councilman Drahos stated he agreed with taking relocation assistance out of the list of criteria. He said he did not see the merit and that it is vague. He asked what it meant.

Ms. Cramer stated Council could reconsider it when they come back to development incentives. Mayor Gerwig said she thinks they will always have to work with leases that are in place.

Mayor Gerwig stated she thinks criterion #8 (housing with rents and prices available to households within 80-140% of the Villages median income) is key and appreciates that being added, because they see a major difference in communities when it comes to sales and rentals in this multifamily area. She said she would like to strike #10 (relocation assistance), since there is a Council majority on that.

Ms. Ferraiolo showed Council a map that identifies properties within 500 feet of collector roads, would be eligible for the building height increase, and are currently residential E, F, G and H land uses. She presented eligible parcels as they exist today and eligible properties once lots are combined to meet the minimum acreage requirement.

Mr. Schofield clarified that all of the properties being shown are not vacant. He said they are developed and would need redevelopment in order to be eligible.

Mayor Gerwig stated she has asked for those kinds of tools for redevelopment in some of the older areas at some point. She said Council knows it is very difficult to get these properties together. She thought this could be useful in redeveloping some of the areas in the Village that they have been working on.

Ms. Ferraiolo stated the last application is the Master Plan Amendment to amend the Wellington PUD. She said the applicant is requesting to:

- a) Modify the Master Plan designation of Pod 30C (5.5 acres) from Tennis Polo Facility to Multi-Family Residential.
- b) Correct the acreage for the site from 8.3 acres to 5.58 acres.
- c) Allocate 50 dwelling units to Pod 30C.
- d) Add two access point along South Shore Boulevard.

Ms. Ferraiolo indicated the resolution also includes the height increase for the project if Council approves the ZTA this evening.

Ms. Ferraiolo showed Council a more detailed view of the changes with Pod 30C, changing the label for multifamily and the 50 units, as well as the change in the access points along South Shore Boulevard.

Ms. Ferraiolo stated the maximum building height would not exceed 56 feet. She said there was a discrepancy in the resolution, as it said a maximum building height of 55 feet. She stated

the Architectural Review Board (ARB) application stated that the building was 55 feet, but it is actually 56 feet. She said Council received an updated resolution today showing that change on page 4. She stated the maximum height is 56 feet and the mechanical equipment would be 65 feet, which is the additional 15%.

Ms. Cramer stated the ARB application was just recently submitted. She said the elevations were modified from the original submittal. She stated staff's understanding when the resolution was put together was that maybe the applicant had decreased the building to 55 feet. She said when staff noted the discrepancy on the elevations, it was clarified with the agent. She stated the revised resolution shows 56 feet.

Ms. Cramer indicated the project provided for a parking structure that reduced paved parking areas, onsite amenities, and landscape enhancements that exceed Article 7, to be eligible for the additional 15% in height for the mechanical equipment and common use areas.

Mr. Basehart stated the proposed text amendment requires additional landscaping above the minimum code. He said in order to achieve this extra incentive, the applicant had to provide landscaping that exceeds the exceeded landscaping.

Mayor Gerwig stated Council had talked the last time the applicant was there about how difficult it is to keep the specimen trees and work around them. She said the applicant is going to make every attempt to use those trees in this plan. She stated it is part of the extra enhanced landscape effort. She asked how staff was going to manage this.

Mr. Basehart stated the code clearly defines the normal landscape requirements that everyone has to meet. He said the trees should be every twenty feet along the perimeter of the property, a number of materials need to be planted, and the spacing has to be right. He stated the proposed amendment that allows for the additional height, clearly defines what the extra landscaping would have to amount to in order to achieve that credit. He said it is easy to see on a landscape plan if the applicant has gone beyond that.

Mr. Schofield explained if the project is within the 35 foot height limit, then it meets the standards of the code as they are written. He said there is an enhanced standard if the project wants to go to 56 feet, which is step one. He stated step two is if the project wants to take advantage of the additional height bonus, as the applicant then has to provide landscaping over and above. He said it is a clear two-step process. He stated it is part of what staff has been trying to do for a year in writing the code. He indicated Council will get the last sections of the code next month.

Ms. Ferraiolo showed Council the proposed conceptual site plan. She stated the site plan is approved administratively and will be reviewed to ensure it complies with the proposed ZTA should it be adopted tonight.

Ms. Ferraiolo showed Council the setback-to-height ratio. She said the taller the building, the more it is setback. She stated the lines show the setback for the corresponding color of the building. Mayor Gerwig said it forces the height to go the furthest from the property.

Ms. Ferraiolo stated the ARB application was submitted on November 4, 2019 and is scheduled for the December 18, 2019 ARB meeting. She showed Council the proposed front and rear elevations of the main building as well as the west and east elevations.

Ms. Ferraiolo also showed Council the renderings for the main building and the elevations of the two-story coach house with the parking underneath. She stated the coach house was still part of the plan. She said the applicant could submit a site plan amendment, once the site plan is approved.

Ms. Ferraiolo stated the Planning, Zoning and Adjustment Board (PZAB) recommended approval of all petitions at the August 14, 2019 meeting. She said the Village Council recommended approval on September 24, 2019 and advised staff to transmit them to the Department of Economic Opportunity (DEO). She stated the Village received a letter on October 25, 2019 from the DEO with no objections or comments.

Ms. Ferraiolo indicated staff recommends approval of Ordinance 2019-07 Comprehensive Map Amendment, Ordinance 2019-05 Comprehensive Plan Text Amendment, Ordinance 2019-06 Zoning Text Amendment, and Resolution R2019-025 Master Plan Amendment as presented by staff.

Mr. Basehart clarified that the building height for buildings in Wellington that anyone can take advantage of remains at 35 feet. He said that this is in the code today and it will stay that way. He stated in order to get additional height, the applicant has to go to Council.

Mayor Gerwig indicated the 35 feet is from the midpoint of the roof line. Mr. Basehart stated that was true for a pitched roof.

Mr. Basehart stated no one gets additional height without coming to the Council, to show that they have met the criteria and the additional height will not negatively impact the surrounding properties. He said, if additional height is granted, the elevator shafts, stair towers, and other roof top pertinences are limited to 35% of the footprint of the building. He stated, most importantly, staff put in a provision that does not make this option of coming to Council to get additional height available to any property that is directly adjacent to single family residential.

Mayor Gerwig stated she feels like staff has put protections in place. She said it looks specific to this project, because they are using these drawings as an impetus for the ZTA. She stated as they work through this, they want to protect the neighborhoods and get some type of tool for redevelopment. She said it is not easy for the applicant or staff.

Vice Mayor Napoleone stated he agreed, as those were the concerns. He said this project has far reaching implications. He stated when it comes time for reinvestment in the community, the Village is protecting its neighborhoods from having tall buildings in their backyards. He said where they can build with the restrictions required to get the extra height and have to come to Council for approval, whatever is proposed will have to fit the character of the community, enhance the community, and not be a detriment to the neighbors. He stated he thought staff had done an excellent job working this out and getting a good set of rules to go by for future changes.

Councilman McGovern stated he agreed. He said this is not only about this project, as it is about something that can be done in other portions of the community. He stated he thought this was a real testament to what is being done here does not have to be what is being done somewhere else. He said these changes provide the flexibility to do redevelopment projects in other areas of the community, which Council knows will happen over time.

Councilwoman Siskind thanked staff and the applicant for working together and for going above and beyond, so that the Village has these extra standards in place. She said she agreed with the other comments that have already been said.

Applicant

Mr. Jon Schmidt thanked Council for their consideration. He stated nothing has changed from the team's last presentation and they are hoping to move forward. He indicated the state has allowed them to do that to this point. He stated the team is in agreement with staff's recommendations, which were different from the original application. He said the site, as the team has designed it, meets and exceeds the standards.

Mr. Schmidt stated the team is there to answer any questions, including Mr. John Green who has been their team leader. He said they are asking for Council's support this evening.

Mayor Gerwig stated Council is aware of an e-mail that was received today, indicating that the resident is adverse to the height being over 35 feet. Ms. Ferraiolo explained the resident called this morning asking why they received a card. She explained the project to the resident, who lives across the street in Wellington Place. She told the resident about the height increase and that the applicant is requesting 56 feet for a four-story building with 50 units. Ms. Ferraiolo stated the resident was opposed to it.

Mayor Gerwig stated one resident is opposed. Ms. Ferraiolo said that is the only e-mail or correspondence she has received since the last meeting. She stated she believed she has not received any correspondence during this entire process, other than this one e-mail.

Councilman McGovern asked Mr. Schmidt about the status of the coach house. Mr. Schmidt stated their project has been lost in time and has been further developed. He indicated their current application includes the coach house. He said if Council feels they cannot support it, the team can remove it. He stated they do not plan to move forward with the coach house. He said they would like to get a site plan approval and then get building permits. He committed to Council that the extra building will not be built, but indicated it is 35 feet and meets all of the setbacks. He stated if Council feels it is detrimental to the project, he will volunteer to remove it as a condition. He said it is in there, because their project gets lost in time as they go through these processes. He stated he would have to do a site plan amendment to what is there right now. He said the team will be amending it, but they would like to get a building permit behind them and get a sales trailer and things going on the site.

Mayor Gerwig asked if the additional units would be added to the building. Mr. Schmidt stated the eight units in the coach house would be added to main building, so the team is asking for the 50 units.

Mayor Gerwig stated she is fine with leaving it the way it is, as she did not think the coach house was a detriment. She thought it might soften the look to have a smaller building on one end. She said the applicant will still have to meet the setback requirements as they go forward. She stated, if anything else changes, the 35% is still there for the overall extra height.

Councilman Drahos stated he liked the coach house, as he would rather have 42 units in the main building.

Public Hearing

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

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

Councilman McGovern asked if the team for this project has stayed the same. Mr. Schmidt stated it has. He said the ownership and the commitment to build this project has remained the same.

Ms. Nubin read Ordinance No. 2019-07 by title.

A motion was made by Councilman McGovern, seconded by Councilwoman Siskind, and unanimously passed (5-0), to approve Ordinance No. R2019-07 (Comprehensive Plan Amendment - Future Land Use Map Designation for the Player's Club Residences) as presented.

B. 19-3375 ORDINANCE NO. 2019-05 (COMPREHENSIVE PLAN TEXT AMENDMENT - BUILDING HEIGHT)

AN ORDINANCE OF WELLINGTON, FLORIDA'S COUNCIL, AMENDING POLICY 1.3.8 OF THE LAND USE ELEMENT OF THE WELLINGTON COMPREHENSIVE PLAN TO MODIFY BUILDING HEIGHT LIMITATIONS FOR PROPERTIES WITH MULTI-FAMILY RESIDENTIAL FUTURE LAND USE MAP DESIGNATIONS; PROVIDING A CONFLICTS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE. CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

Refer to item 7A for a summary of the discussion.

Ms. Nubin read Ordinance No. 2019-05 by title.

A motion was made by Councilwoman Siskind, seconded by Vice Mayor Napoleone, and unanimously passed (5-0), to approve Ordinance No. R2019-05 (Comprehensive Plan Text Amendment - Building Height) as presented.

C. 19-3377 ORDINANCE NO. 2019-06 (ZONING TEXT AMENDMENT – BUILDING HEIGHT)

AN ORDINANCE OF WELLINGTON, FLORIDA'S COUNCIL, AMENDING ARTICLE 6, CHAPTER 5, SECTION 6.5.8.C, BUILDING HEIGHT, OF THE WELLINGTON LAND DEVELOPMENT REGULATIONS BY MODIFYING THE BUILDING HEIGHT REGULATIONS FOR PROPERTIES WITH A MULTIFAMILY RESIDENTIAL FUTURE LAND USE DESIGNATIONS; PROVIDING A CONFLICTS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

Refer to item 7A for a summary of the discussion.

Ms. Nubin read Ordinance No. 2019-06 by title.

A motion was made by Councilman Drahos, seconded by Vice Mayor Napoleone, and unanimously passed (5-0), to approve Ordinance No. R2019-06 (Zoning Text Amendment - Building Height) as amended to remove item #10 of the site design criteria.

D. 19-3378 RESOLUTION NO. R2019-025 (THE WELLINGTON PUD MASTER PLAN AMENDMENT - THE PLAYERS CLUB RESIDENCES)

A RESOLUTION OF WELLINGTON, FLORIDA'S COUNCIL, APPROVING A MASTER PLAN AMENDMENT [PETITION NUMBER 19-004 (2019-003 MPA 1)] AMENDING THE WELLINGTON PLANNED UNIT DEVELOPMENT (PUD) FOR CERTAIN PROPERTY KNOWN AS THE PLAYERS CLUB (F.K.A. EQUESTRIAN POLO VILLAGE AND COMPLEX OF PALM BEACH POLO AND COUNTRY CLUB WELLINGTON), TOTALING 5.58 ACRES, MORE OR LESS, APPROXIMATELY LOCATED ON THE SOUTHWEST CORNER OF SOUTH SHORE BOULEVARD AND GREENVIEW SHORES BOULEVARD, AS MORE SPECIFICALLY DESCRIBED HEREIN; TO MODIFY THE MASTER PLAN DESIGNATION OF POD 30C FROM TENNIS POLO FACILITY TO MULTI-FAMILY; TO MODIFY THE ACREAGE OF POD 30C FROM 8.3 ACRES TO 5.58 ACRES; TO ALLOCATE 50 DWELLING UNITS TO POD 30C; TO ADD TWO (2) ACCESS POINTS ALONG SOUTH SHORE BOULEVARD; TO ALLOW FOR INCREASED BUILDING HEIGHT FOR THE PROPERTY; PROVIDING A CONFLICTS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

Refer to item 7A for a summary of the discussion.

Ms. Nubin read Ordinance No. 2019-25 by title.

A motion was made by Vice Mayor Napoleone, seconded by Councilwoman Siskind, and unanimously passed (5-0), to approve Ordinance No. R2019-25 (The Wellington PUD Master Plan Amendment - The Players Club Residences) as presented.

E. 19-3373 ORDINANCE NO. 2019-12 (CHAPTER 9 OF ARTICLE 7, SIGN CODE)

AN ORDINANCE OF WELLINGTON, FLORIDA'S COUNCIL AMENDING THE WELLINGTON LAND DEVELOPMENT REGULATIONS, MORE SPECIFICALLY, A ZONING TEXT AMENDMENT TO AMEND THE SIGN CODE; TO ESTABLISH SPECIFIC STANDARDS AND REGULATIONS RELATED TO SIGNS IN ARTICLE 7 OF THE LDR; PROVIDING A CONFLICTS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE.

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

Mr. Bob Basehart stated staff presented a revised sign code a few months ago as part of one of

the Articles in the code. He said Ms. Cohen and the legal department have since looked it over with respect to some court rulings, specifically a Supreme Court ruling on message neutrality, and made some revisions to bring it into conformance with the state of the legal condition for sign enforcement.

Ms. Cohen stated there were no major substantive changes other than adding some preliminary language as to the intent and trying to change the wording slightly to be sure it is content neutral. She said that is what the courts have been focused on when looking at sign codes. She stated the courts want to ensure that they are not having to read the sign in order to figure out how to regulate the sign. She said some things have been moved around and slightly reworded to ensure it is content neutral and could survive if challenged. She stated it was tweaked a bit to make sure that as the case law progresses and more cases are interpreted, it remains consistent with the legal opinions.

Ms. Cohen stated the case that precipitated this was a seat change when it came to regulating signs within local governments. She said the Supreme Court case that overturned the sign codes that had been used by local governments for many years was quite a change for municipalities. She stated almost every local government nationally has had to redo, revamp or rewrite their entire sign code.

Mayor Gerwig stated this is to protect the Village from lawsuits. Ms. Cohen said that was correct.

Councilman McGovern stated the Village was still maintaining the essence of its sign code. Ms. Cohen said, yes, as closely as they could. She stated instead of regulating the type of each individual sign, like a restaurant, school or retail sign, it is in general terms where they do not have to actually read what the sign says in order to know what regulation applies. She said that is what the law currently requires.

Councilwoman Siskind asked how often these changes will be expected to be made. Ms. Cohen stated this should be it for a while, unless there is a big federal decision that upends it again. She said she thinks the court did not anticipate the case having such a far reaching impact. She stated many municipalities have had to scramble to make their ordinances comply.

Councilman McGovern asked if any changes of significance should be pointed out. Ms. Cohen stated the Council has the ability to regulate graffiti, which has been added to the version that was already in place. She said snipe signs and directional signs kind of started the whole issue, so that has been addressed. She stated some things have been moved around and re-categorized and the language has been modified slightly so that it is tighter.

Public Hearing

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

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

Mr. Basehart stated the Village has not lost their ability to regulate signs. He said they are now talking more about size and shape and ways of mounting them to buildings or windows, as opposed to what the signs say.

Mr. Schofield stated the regulations in terms of the number of signs, the sizes of signs, etc., all remain in place. He said the changes make sure they are not regulating based on the speech contained in the sign.

Ms. Cramer stated based on the status of Article 7, which is where this chapter was pulled from, it will be coming back to Council for a second reading. She said staff's plan, if this sign code is approved this evening on first reading, is to add it back to Article 7 and bring the entire land development code back to Council to hear it all at one time. She stated there will not be a second individual reading on this sign code, as it will be a part of the overall hearing.

Mayor Gerwig stated the Council wanted to keep the Village from getting into any kind of litigation about content, so she did not have a problem with any of this. She said they would like to have more control, but she thanks staff for their work if this is as far as they can go.

A motion was made by Councilman Drahos, seconded by Vice Mayor Napoleone, and unanimously passed (5-0), to approve Ordinance No. 2019-12 (Chapter 9 of Article 7, Sign Code) on first reading.

8. REGULAR AGENDA

There were no Regular Agenda items.

9. PUBLIC FORUM

Mr. Schofield indicated no public comment cards were received.

10. ATTORNEY'S REPORT

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

- She stated she has not heard from the Councilmembers on the class action regarding the opioid litigation and assumed they wanted to stay a part of the class. Council indicated that was correct.
- She stated she also has not heard from the Councilmembers with respect to whether they want to sign onto the City of Miami Beach brief regarding the civil rights ordinance. She said the amicus brief needed to be submitted before the next meeting of the Village Council.

Mayor Gerwig stated she feels the safe harbor helps the Village a bit.

Councilman McGovern explained the question is if the Council wants to join into the amicus brief for an appeal of one particular case in Orange County. He said the safe harbor portion is going to remain.

Ms. Cohen stated the safe harbor provision in the civil rights ordinance would provide the Village with a measure of protection.

Vice Mayor Napoleone asked if the ordinance at issue was the same as the Village ordinance. Ms. Cohen stated it was substantially the same.

Vice Mayor Napoleone stated, if the Village signs onto the amicus brief, they are basically saying their ordinance should still control. Ms. Cohen said that was correct.

Mayor Gerwig indicated the Village Council unanimously passed their human rights ordinance in 2016. Ms. Cohen stated that many municipalities have a civil rights ordinance.

Ms. Cohen explained that in a recent case in Orange County, their civil rights ordinance was challenged and the court held that it was preempted by the State of Florida Civil Rights Act. She said the question is if that decision is correct. She stated Orange County has appealed the decision to the 11th Circuit, so there will be a determination from an appellate court concerning that preemption issue. She said Miami Beach is writing an amicus brief in support of Orange County and has asked other municipalities and counties to sign onto their brief. She stated not many have agreed to sign on at this point. She said whether this Council does or does not, she did not know if it was going to do much to make it stronger to the court. She stated the court is either going to find that it is or is not preempted.

Mayor Gerwig stated the thinking here is that it goes a little further than the state law, but it also gives local control to a board that is not elected. She said if the Village does something that violates their human rights ordinance, the Village does not have the authority to make that decision. She stated it goes to a county panel that is appointed by county commissioners. She explained that Lake Park was found in violation and came up sideways against this. She said they decided to withdraw from the county ordinance that the Village is subjecting themselves to.

Ms. Cohen stated Lake Park adopted a civil rights ordinance and had five sober home owners who were seeking reasonable accommodation. She said they were denied accommodation by the special magistrate. She stated rather than filing a cert petition, which is the correct procedure when there is an adverse ruling from the special magistrate, they filed a complaint with the county human rights commission. She said the commission found Lake Park in violation of housing discrimination. She stated it was argued by the attorney at the time and by the manager that it was inappropriate, they did not have jurisdiction, it was the wrong venue, etc. She said she thinks they ultimately resolved their issue.

Ms. Cohen stated Lake Park attempted to opt out of the definition of family in the civil rights ordinance. She said in speaking with the county, it is really all or nothing. She stated they can opt out of the definition of an employer so that they are not deemed, because this applies to all businesses in the county with fifteen or more employees. She said the Village could opt out of the definition of employer, because it is expressly set forth in the county civil rights ordinance, but there is no similar position or ability to opt out of the definition of family. She stated with respect to family and that definition, it is either you are in or out.

Ms. Cohen stated the question she posed to Council with the material she sent to them, is whether they want to do nothing, opt out of the definition of employer, or repeal it.

Councilman McGovern stated it is not do nothing. He said it is do nothing now and wait to see what the court says.

Ms. Cohen stated if there was a challenge and if the ordinance was alleged to have been preempted, the new statute under Chapter 57 of the Florida Statutes gives thirty days to repeal the ordinance. She said if that occurred, one could either file a declaratory judgement action, repeal the ordinance, or decide at that point how to proceed.

Councilman McGovern stated there is still time to review that portion. He said Ms. Cohen is asking if Council wants to sign on as an additional party to the amicus brief being put together by Miami Beach relative to the federal case that is going to the 11th Circuit over this challenge that arose in Orange County.

Councilman McGovern asked who was writing the brief. Ms. Cohen stated the brief is being written by the City of Miami Beach in-house counsel with input and assistance from Orange County. She said she understood that Orange County was not going to pursue the matter, but the City of Miami Beach asked if they could prepare the brief for them and Orange County agreed.

Ms. Cohen stated, at this point, only three cities or counties have signed on: City of Fort Lauderdale, Orange County, and Palm Beach County. She said some are pending: Tampa, Broward County, Delray Beach, Orlando, Wilton Manors, Monroe County, and Wellington. She indicated it did not mention having contacted West Palm Beach.

Mayor Gerwig stated she was not prepared and hoped she had some time to sit with Ms. Cohen.

Vice Mayor Napoleone stated he understood the ordinance on appeal is substantially similar to the Village ordinance. He said if the Village was to sign onto the brief, they would be basically saying the Village thinks the ordinance the Council unanimously enacted says they have a right to protect their citizens how they see fit. He stated the Village thinks that is a valid ordinance that should be enforced. He said if Council believes in the ordinance they passed, he did not see any harm in signing onto the brief as long as Ms. Cohen can review it before the Council agrees to sign onto it.

Vice Mayor Napoleone stated he would conditionally agree to sign onto the brief provided Ms. Cohen gets to read it and give her approval to sign on, if she believes the brief correctly articulates Council's position on the issue.

Councilman McGovern stated he agreed with Vice Mayor Napoleone. He said he is fine with giving Ms. Cohen, as the Village Attorney, the authority to review the brief provided she is in agreement with all of it.

Mayor Gerwig stated she needed to step back. She said the Village Attorney did not recommend that Council agree to this ordinance in the first place. She stated Ms. Cohen said it was an area they do not need to do or it was not necessary.

Ms. Cohen stated the concern she had and still has is that by not opting out of the definition of employer, they expose the Village to liability they might not otherwise have in the event of a lawsuit. She said while their employees could file a complaint with the Equal Employment Opportunity Commission (EEOC), this gives them the additional ability to file a complaint with the county and be heard by or subject to this board. She stated, as the Village Attorney and taking a conservative approach, she thinks it is

always best to not increase their potential liability if they can avoid it, which was her recommendation.

Councilman McGovern indicated Ms. Cohen made that recommendation and the Council unanimously voted in the other direction. He stated he thinks Ms. Cohen is fully capable of reading the brief to see if it puts forth the best fight to preserve the Village ordinance as passed by the Council. He said he is comfortable with her reading it and deciding whether or not the Village should sign on. He stated without knowing what it says that decision cannot be made.

Mayor Gerwig stated she preferred that Council meet again on this issue. She said she did not mind if it is a 4-1 vote. She stated she feels they should all weigh-in on this once it is all mapped out. She said she is concerned if they are taking on additional liability. She stated if something is proposed and the Village is challenged in some way, they have a 30-day safe harbor.

Councilman McGovern stated the only discussion Council is having is if they should or should not sign on to the brief. Mayor Gerwig said she was fine with staying completely out of it and letting it play out without the Village's input, because she does not know what difference it makes. She stated, secondly, she knows the Village is protected if something happens and has time to find out what the legal status is on this.

Vice Mayor Napoleone stated nothing Council does tonight changes the existing ordinance or any liability the Villages does or does not have. He said this Council is just saying they support the fight to keep the ordinance they enacted in place to protect their right to pass laws they think best protect their residents. He stated the fact the Village already has this ordinance on the books, they should sign onto the fight to keep it, provided Ms. Cohen reviews the brief.

Mayor Gerwig stated that might be true, except for looking back and seeing what happened to Lake Park. She said this panel is appointed by the county commissioner, is not comprised of elected officials, and does not necessarily have any expertise in any of this. She stated she is willing to stand back and let the courts decide this, knowing that the Village can protect themselves if need be. She said this is one where it is nice to have attorneys on Council. She stated all of them have been provided this information, but it is not her expertise.

Councilman McGovern stated all of the points Mayor Gerwig is making tonight are completely unaffected by whether the Village signs on or does not sign on to this brief.

Councilwoman Siskind asked if Ms. Cohen would be able to read the brief before an answer is due. Ms. Cohen stated she would be able to.

Mayor Gerwig stated the discussion right now is if Ms. Cohen gets to make the call, as to whether the brief meets the criteria. She said Ms. Cohen is not an elected official, so they are right back to that conversation.

Councilman McGovern stated Ms. Cohen is the Village Attorney and it would be her job to advise whether the substance of this brief says legally what Council and the Village would want it to say.

Councilman Drahos asked if there was a way to accomplish both. He stated he imagined, when the brief is finished and Ms. Cohen gets an opportunity to review it, Ms. Cohen would consult with the Council and let them know her thoughts.

Ms. Cohen stated she either needed a direction to sign on if it meets Council's criteria or not sign on. She said that decision needs to be made at a public meeting.

Councilman Drahos asked about the timeframe of the brief. Ms. Cohen stated she understood they have ten days from the date the answer brief is due. She said that timeframe would occur before Council's next meeting.

Vice Mayor Napoleone stated when the brief comes in, Council is still going to get Ms. Cohen's recommendation as to whether they should sign on to it or not. He said some of them may read the brief and decide on their own, but generally they are going to take Ms. Cohen's recommendation as to whether the brief correctly articulates their position or not. He stated if it does, Ms. Cohen will recommend that the Village sign on.

Mayor Gerwig stated she preferred that Council had a meeting. Councilman Drahos said this was an example of specific legal judgement. He stated they were not asking Ms. Cohen to make a policy decision for Council.

Councilman McGovern stated they were either all in or all out, because changes are not going to be made to the brief, unless Ms. Cohen has already had them made based on what any of them have said.

Ms. Cohen stated if Council gives her that discretion, and she reads the brief and it sets forth their position on their ordinance and home rule powers, she is going to sign onto the brief.

Councilman McGovern stated if it is poorly written or if it does not represent the Village properly, she will not sign onto the brief. He said he was comfortable with that.

Councilwoman Siskind stated that was good with her.

Mayor Gerwig stated Ms. Cohen has consensus from the Council. She said she herself is not there with this whole process.

11. MANAGER'S REPORT

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

- The next Regular Council Meeting is scheduled for Tuesday, November 26, 2019, which is Thanksgiving Week. Mr. Schofield stated there are currently no items scheduled for that meeting. Council consensus was to not have the November 26, 2019 Council meeting. Mr. Schofield indicated the next Council meeting is scheduled for December 10, 2019.
- Mr. Schofield provided an update on the CVS building. He stated staff sent a letter to CVS to repair or remove. He said what the Building Department has seen from CVS was so inadequate that they returned it. He stated CVS has spoken with staff. He said staff is notifying the Health Department and proceeding along the path that CVS is not

going to comply. He stated, if the Village demolishes the building, the date will be November 25, 2019.

Ms. Cohen indicated the Village will want to publish a notice of intent to demolish. Mr. Schofield said staff was moving along those lines.

Mayor Gerwig stated it is not the Village's responsibility to correct this problem. She said the person who created this problem needs to correct it. Mr. Schofield stated he agreed.

Mr. Schofield stated the initial estimates to do the demolition were in excess of \$100,000. He said it will be \$38,000 if the Village does it, including removing the slab.

Mayor Gerwig stated she did not want to go for efficiency. She said the liability for all of this is on the owner. She stated she did not know why they were having a conversation about the Village doing what CVS needs to do. Vice Mayor Napoleone agreed that CVS needs to take care of it.

Mr. Schofield indicated the order for CVS is to correct or demolish. He said, if they do not, what is staff to do. Mayor Gerwig stated staff is to bring it back to Council before the Village takes on the responsibility of demolition.

Ms. Cohen stated that was not the typical process. She said the building official has the authority to order it demolished. She stated the Village normally contracts with an outside company to do the demolition.

Mayor Gerwig stated staff has brought demolitions before the Village Council before they were ordered. She asked if that was necessary. Ms. Cohen stated it was informational, but the building official has already declared it an unsafe structure.

Mayor Gerwig stated Council discussed it and gave direction. She said if it is possible for buildings to be repaired, that is the goal.

Vice Mayor Napoleone stated it came to Council because it cost more than \$25,000 and not because it was a policy issue. Mayor Gerwig said she does not want the Village to always bear the expense.

Councilman Drahos stated Council has emphasized to staff to keep the pressure on CVS. He said he does not like this building and this Council never had an opportunity to vote on it. He stated it has been bad from the start and he does not want to delay it. He said he wants it taken down as soon as possible, because it is a danger to the community in its current condition.

Councilman McGovern stated the Village has asked CVS to fix this building and build it safely, and it seemingly has been unable to do that. He said if CVS cannot fix it, they need to take it down or the Village can take it down.

Councilwoman Siskind stated, if CVS has not been able to build it properly, how they will be able to take it down safely and properly. She said she did not want the Village to be out the money and asked if the Village could recoup the expenses.

Mayor Gerwig stated Councilman Drahos said he did not like the building and did not get to vote on it. She said if CVS demolishes the building, they can still rebuild it exactly as it is.

Mayor Gerwig stated as far as whether the Village wants to take the building down or have CVS take it down, she wants it done right. She said she does not want the Village to be responsible for a job that should be done by CVS. She stated the Village needs to secure the building for the public.

Mayor Gerwig asked if CVS was being fined daily. Mr. Schofield stated building permits are issued for a year with an extension of two years. He said CVS is within the timeframe of the building permit. He stated every time staff goes to the site and fails an inspection, it is a \$250 fine. He said that is happening multiple times a day. He stated staff has just been through the information that has been submitted by the engineer for CVS and there is no documentation for what staff can clearly see has not been done. He said there is no daily fine for that because of the way the building code works.

Vice Mayor Napoleone stated he did not want the responsibility or liability of tearing down the building. He asked what would happen if the Village orders CVS to tear down the building and they do not do so. Councilman Drahos stated if the Village contracts it out, the Village will be fully indemnified as part of the contract.

Mayor Gerwig stated it seemed some professional regulation was extremely lacking. She said the design was done by professionals and the inspectors were onsite. She stated this should be brought to the professional board, whether it is the contractors or the engineering involved. She said she did not want to get into whose fault this is, but everyone wants it corrected. She stated she did not know if they could stop it from being rebuilt, as it has the right to be built where it is.

Councilman McGovern stated he thought they were back to the safety point. Mayor Gerwig said the Village building official has determined it unsafe.

Ms. Cohen stated it would be wonderful if CVS would take down the building. She said if they do not, it becomes incumbent on the Village. Mayor Gerwig stated she has no preference as to whether CVS corrects it or takes it down.

Ms. Cohen stated, if CVS is unable to correct the building and fails to take it down, it would be prudent to authorize the Village to expend the funds to take it down and lien the property, since Council will have another meeting until December.

Mayor Gerwig stated the Council should have a meeting in two weeks if the Village is going to spend \$68,000 to do a demolition that is someone else's liability and responsibility. Councilman Drahos said he agreed, as the residents want this handled.

Councilman McGovern stated he agreed and would be happy to have the meeting. He said he would also be fine with CVS fixing the building or taking it down. He stated, if that is not possible, the Village can take it down.

Vice Mayor Napoleone asked if the building was fixable at this point. He said it does not seem fixable at this point, as CVS has failed to fix all of the things the Village keeps

fining them for. Mr. Schofield stated it was not within his expertise to make that determination.

Mr. Schofield stated the State of Florida passed a regulation a number years ago that required buildings of a certain size and complexity to have threshold inspectors. He said the CVS inspections were done by a threshold inspector. He stated the contractor was notified in May that the Village was not comfortable with the roof truss system and did not want it poured, but CVS poured it anyway. He said CVS poured the roof while the contractor was on the phone with the threshold inspector, who actually did not see it being done. He stated these are the types of things staff has been uncovering since then.

Mayor Gerwig stated that sounded like a violation of state law. Mr. Schofield said the Village has filed the complaints and is going after the licenses of both the contractor and the engineer. He stated the architectural plans show a wall thickness of six inches and the structural plans that CVS is supposed to build it by say eight inches.

Mayor Gerwig stated Village staff members are charged with that and have the expertise and should have caught that. Mr. Schofield explained it is not unusual for the final structural design to be different than the architectural plan. He stated the architect drew a separate structural detail that got approved and showed the wall thickness had to be eight inches. Mr. Schofield said CVS chose not to do that.

Mayor Gerwig stated the Village should have failed the inspection. Mr. Schofield indicated the wall inspection was done by the threshold inspector. Mayor Gerwig stated this is CVS's problem. Mr. Schofield said staff has notified the firm for CVS that the Village will go after their errors and omissions insurance for any costs not recovered from the contractor.

Mayor Gerwig stated the roof pour and the wall are two separate issues. Mr. Schofield said there are a lot of issues. He stated as staff has gone in, required forensic testing, and has done some destructive testing. He explained CVS hired a new threshold inspector who was terminated once he started looking at the situation. He said another threshold inspector and staff have been through exactly what is expected of CVS.

Mayor Gerwig asked why CVS, as it is a major corporation. Mr. Schofield stated CVS is not the actual owner and only leases the building. He said the building is being built by a company who leases space to CVS. Mayor Gerwig asked for the name of the company.

Mayor Gerwig stated she was willing to come back and meet on Tuesday before Thanksgiving to discuss this again. She said she would like to get to the bottom of how this happened.

Councilwoman Siskind stated she was willing to come back as well. She asked what Council would know then that they do not know now. Mayor Gerwig asked why Council was discussing this at all, if the building official is the one who decides what has to be done to keep them safe.

Mayor Gerwig stated she is a bit frustrated, because it seems so many things have gone wrong. She said the Village should have caught some of it. Mr. Schofield stated what the Village inspected was caught. He said CVS was told to not do what they did. He

stated CVS has an inspector there.

Mayor Gerwig stated the Village will not be able to get errors and omissions insurance, if this is the level of scrutiny the Village is doing.

Councilman Drahos stated the Village cannot just tolerate status quo. He said the residents are concerned about the building and the businesses in that plaza are suffering.

Mayor Gerwig stated she agreed. She said the Village taking the building down and taking on that responsibility will probably delay everything further, unless it can be corrected.

Councilman Drahos stated he did not understand why tearing it down would delay it. Mayor Gerwig said CVS would have to start the whole process over again.

Vice Mayor Napoleone stated right now there is a structure, but it is unsafe and unsound. He said if it cannot be fixed, it should be torn down. He stated it is not known right now if it can be fixed.

Councilman McGovern stated this whole discussion began as an informational update as part of the manager's comments. Mayor Gerwig said Council has been frustrated about the process.

Councilman McGovern asked if there was a decision for Council to make. Mr. Schofield stated the decision as to whether the building has to come down is made by the Village building official. He said the building official has already sent a letter to CVS that says repair or remove. He stated CVS has 15 days to comply with that. He said staff is preparing the necessary notifications and advertisements, so if CVS does not take the building down the Village is in a position to do so. He stated he was not in a position to have the building official remove it, which is within their code based authority. He said as the Village Manager his threshold spending is \$25,000 and the current cost estimate is \$38,000.

Councilman McGovern stated that is the issue that would come to Council on November 26th. He said he wanted to have that meeting. Councilman Drahos agreed.

Mr. Schofield stated he hoped that CVS would take the building down.

Ms. Cohen stated Council could authorize Village staff to expend those funds, if CVS does not tear down the building by the deadline. She said Council would then not need to have the meeting.

Vice Mayor Napoleone asked what would change between now and the second meeting, as to whether they would decide to spend the money or not. Ms. Cohen stated CVS may come in with plans that are adequate to repair the building. She said her understanding is that there is not much confidence on the part of Village building staff and building official that the building can actually be repaired at this point.

Mayor Gerwig stated engineering is time and money. She said with time and money, anything can be fixed. She stated she did not want to make this a longer process. She

said if the Village decides the building cannot be repaired, her concern is that the Village does not have the expertise to do that and the building official may not.

Mr. Schofield stated the Village has hired a structural engineer who can evaluate and do this. He said it will not be a decision that is made slowly, as the Village building official is one of the most competent he has ever worked with.

Mayor Gerwig stated she did not want to be taken as being critical of Mr. Tomasik or any Village staff. She said she is just saying that this has gotten so far out of control. She stated she did not want to make it worse instead of better. She said if it cannot be repaired, she would like to get to the bottom of that. She stated she did not mind coming back and meeting about it.

Mr. Schofield stated he or Mr. Tomasik would ever think that a comment made here was a comment about his professional confidence. He said he as the Village Manager is not comfortable that the Village has someone on staff with the necessary expertise, which is why they hired an engineer to review all of these things.

Mr. Schofield stated he was not in a position to take a design from the firm that did the original plans. He said he certainly was not going to take one from the threshold engineer that CVS had to do this. He stated they knowingly filed inaccurate information before.

Mayor Gerwig stated she thinks it comes down to the inspection and not the plan design. She said if the plan design was reviewed and met the criteria, she did not know why the Village was going back and finding fault with the original designer.

Mr. Schofield explained the original designer and the threshold engineer are the same engineer. He said as the Village has brought someone in from the outside, they have pointed out the issues. He indicated there are places in the building where there are supposed to be beams and there are not. He stated, in some cases where the threshold engineer inspected, the block spacing does not exist. He said walls that are supposed to have connection points do not have them. He stated the Village would not have seen these things. He said the threshold inspector should have picked up on these things and certified that he did. He indicated the Village has an e-mail from the threshold inspector saying that he did not actually go there and that he talked to the contractor over the phone who assured him it was correct.

Mayor Gerwig stated she would think that licensing would be in jeopardy at this point, if someone is saying they were not there when pours were done and were required to be there. She said there is something bigger going on here. Mr. Schofield stated, as more information becomes available, staff is filing complaints with the Florida Department of Business and Professional Regulation (DBPR) on both the contractor and threshold inspector.

Mayor Gerwig asked why the threshold inspectors are required. Mr. Schofield stated most municipalities do not have the expertise to do that kind of inspection. Mayor Gerwig said it is also a safety issue.

Councilman McGovern stated these are managerial issues. He said he is confident that the manager and the building official have this.

Mayor Gerwig stated she wanted it corrected. She said she cannot imagine how the Village has gotten into this situation. Vice Mayor Napoleone stated the Village got into this situation, because the contractor kept doing things he was not supposed to and was not getting inspections.

Mr. Schofield stated the Village reported the failure to inspect and failure to record. Mayor Gerwig said she thought the Village was doing what it was supposed to do, which is stay on top of it.

Councilman Drahos stated he felt like they were stuck in neutral, until there is a decision if the building is going to stay or not. He said he had every confidence that Mr. Schofield; Mr. Tomasik, Village building official; and any outside people they have retained are going to work through this process by November 25th. He stated the questions are if Council wants another update on November 26th, to decide whether or not to allocate money over the manager's authority at that point in time, and to decide whether or not this building is going to be demolished or not. He said Council can authorize staff to make those decisions on November 26th or Council can meet and get fully briefed and then make the decisions on November 26th.

Councilman Drahos stated he preferred to have the meeting. Mayor Gerwig thought it was Council's duty to have the meeting.

Councilman McGovern stated he thinks they should have the meeting, not because they do not have the confidence that Mr. Schofield, Mr. Tomasik and Ms. Cohen can make that decision, but because the public wants to know. He said Council's job at the end of the day comes back to public safety and they want to know if it is going to be safe one way or the other.

Mayor Gerwig stated she does not want to delay it in a way that makes the matter worse instead of better.

Councilman McGovern stated Council's only role in that oversight is the letting of the demolition contract.

Mayor Gerwig stated she thinks there has been some major dropping of the ball in this process. She said she has a hard time imagining how it has gotten to this point without any other options. She stated she is willing to come back and meet. She said she cannot imagine the building being unrepairable. She stated it does not seem that tearing it down and starting over will be the quickest way to solve the problem.

Councilwoman Siskind thought tearing it down might be the safest way. She said she did not think she would ever step foot in the building if it continued to be built the way it has been going.

Councilman Drahos asked who was doing the demolition, how much it was going to cost, when it will start and when it will be finished.

Mayor Gerwig stated the Village has people in place to do plan reviews and inspections. She said there is a problem here, but she is not the person to say whether or not CVS can repair this building properly or not. She stated if it cannot be done, CVS should tear

it down. She said she did not want the Village to have to be the agent every time something has to be demolished and have to come along and fix it. She stated that is CVS's obligation.

Vice Mayor Napoleone stated if it is determined that it cannot be fixed, then it must be torn down. He said if CVS is told to tear it down and they do not, the Village has to tear it down. He stated the Village can determine if it is fixable or not.

Mayor Gerwig stated she wanted to hear all of this in front of Council. Mr. Schofield said staff has worked with this contractor for five months to try to find a solution and could not get anywhere. He stated the original stop work orders came before the roof was poured in May.

Mayor Gerwig stated the roof was poured in violation of the stop work order. She asked what the state does for regulating that. She said she was shocked that no one got hurt. Mr. Schofield stated the Florida Department of Business and Professional Regulation (DBPR) will deal with the complaints the Village filed in due course. He said the state will not step in.

Mayor Gerwig stated all of the vendors involved are licensed and insured, so all of their insurance carriers should be taking care of this problem. Mr. Schofield stated his preference is that CVS either repair or tear down the building. He said it would not be his first choice that the Village of Wellington tear down the building. He stated he discussed costs, because the original estimate was more than \$100,000. He said staff has gone through and done the things that they need to do to make sure that they are compliant with the building code, they got a cost to remove it. He stated that cost is \$38,000. He said no matter what, staff will be back to get an authorization on the contract. He stated he was not asking Council to approve it tonight. He said his preference and he believed the building official's preference that the contractor and the actual owner of that building take care of this themselves. He stated it is not a good idea for the Village to do it, as it would be their last resort. He said if CVS had built that building according to the plans that were approved, it would be safe, the roof would not have collapsed, and there would be concrete in the columns.

Mayor Gerwig stated all of this is on the threshold inspection at this point. She said the Village still has inspections that they have done, which is why CVS was told not to pour.

Ms. Cohen stated CVS has the ability to appeal to the Construction Board of Adjustments and Appeals the order of the building official to repair or demolish. She said if that happens, it will delay this matter. She thought the Village might be able to require a bond posting, but that could be a potential delay.

Mr. Schofield indicated the Construction Board of Adjustments and Appeals does not meet regularly, but does so as required by the Florida Building Code. He stated if the Village gets an appeal, staff schedules a meeting as soon as the members can get together. He said CVS has ten days to make an appeal, but he did not know if they were going to do that or not. He indicated they were about four days into the appeal process, so CVS probably has until the first part of next week to actually make an appeal.

Vice Mayor Napoleone stated he will be in North Carolina for the November 26th Council

Meeting. He said he has zero confidence in this contractor and in anyone who has been working on this building to date. He stated they have proven to be incompetent in getting this done and fixing anything the Village has told them to fix. He said he did not see how they were going to fix what they have not been able to fix for months.

Vice Mayor Napoleone stated when Council meets next time and votes, he believes this building should be torn down by CVS. He said if they do not do it, the Village should do it. He stated this building should come down, because he does not think that anyone should go into that building. He said he is the lawyer and not the engineer, but it seems to be unfixable and there has been nothing but problems with that building. He stated if CVS wants to build it, they should start from the ground up from scratch and do it right the first time.

Councilman Drahos stated the Council should meet on Tuesday. Mr. Schofield indicated the next meeting of this Council will be on Tuesday, November 26, 2019 at 7:00 PM.

Mayor Gerwig stated if CVS asks for an appeal from the Construction Board of Adjustments and Appeals, the Council will not be able to meet on that date. Mr. Schofield stated he will know within the next week whether CVS is going to appeal or not. He said if they appeal, he will notify everyone and they will not have the meeting. He stated if CVS does not appeal, Council will have a meeting.

At this point, Councilman McGovern indicated there is an open seat on the Construction Board of Adjustment and Appeals. He stated they have had an application from Mr. Charles Hernicz, a construction lawyer, for some time. He asked the Councilmembers for their thoughts on this.

Vice Mayor Napoleone asked Ms. Cohen if she had any advice as to who needs to be on the Construction Board of Adjustments and Appeals and if Mr. Hernicz is qualified to sit on this board.

Ms. Cohen stated the members of this board should be knowledgeable in the technical codes, meaning the building code. She believed that an attorney who has practiced construction law certainly has relevant knowledge to that. She said it is sometimes difficult for the Village to fill this board.

Councilman McGovern stated Council has discussed Mr. Hernicz several times and has not received any other applications. He said Mr. Hernicz has been a longstanding construction attorney in this community for many years and has the appropriate expertise.

A motion was made by Councilman McGovern, seconded by Councilwoman Siskind, and unanimously passed (5-0), to appoint Charles Hernicz, as an At-Large member, to the Construction Board of Adjustments and Appeals.

12. COUNCIL REPORTS

COUNCILWOMAN SISKIND: Councilwoman Siskind presented the following report:

- She stated she enjoyed participating in the Palm Beach County Literacy Coalition Read for the Record. She said she hopes the Village wins.

- She commended the Wellington Community Foundation on the Red, White and Blue Jeans "A SALUTE TO OUR HEROES" event. She said it was a great event and the Foundation raised over \$100,000.
- She stated the Palm Beach Sheriff's Office held their softball tournament. She said there was a great turnout.
- She stated a lot of residents reached out to her to say how great the Veterans Day ceremony and parade was this year. She said some had never attended before.
- She commended the Garden Club on the beautiful Blue Star Memorial dedication. She said it was a beautiful event.
- She indicated the basketball groundbreaking just took place at Tiger Shark Cove Park.
- She stated the Bink's Carnival is this Saturday at 11:30 AM.
- She wished everyone a Happy Thanksgiving.

COUNCILMAN MCGOVERN: Councilman McGovern presented the following report:

- He stated he concurred with Councilwoman Siskind's comments.
- He reminded everyone that the Village is still collecting for the Hometown Holiday Food Drive.
- He wished everyone a Happy Thanksgiving.

COUNCILMAN DRAHOS: Councilman Drahos presented the following report:

- He congratulated the Florida State University men's basketball team on defeating the University of Florida last Sunday.

VICE MAYOR NAPOLEONE: Vice Mayor Napoleone presented the following report:

- He commended Community Services and Wellington Community High School students on the fantastic Trunk or Treat event. He said this event gets better and bigger every year.
- He stated the Tree Lighting is on December 6, 2019.
- Vice Mayor Napoleone stated a pedestrian was hit by car at Wellington High School when they were crossing Wellington Trace in the middle of the block. He said the Village cannot put a crosswalk in the middle of a street, because it has to be at an intersection. He stated the solution is to cross at the crosswalks. He said parents are dropping off their kids where they should not be, because they do not want to wait in line or have their kids walk too far. He stated if people follow the rules, cross where they are supposed to and drop-off where they are supposed to, kids would not be getting hit by cars. He said he did not know what they could do to stop it. He stated PBSO can be there to enforce the rules on dropping off and crossing streets to avoid people and children from getting hurt. He asked that they educate people on how and when to drop their kids off at the schools, especially at Wellington Community High School.
- He wished everyone a Happy Thanksgiving.
- He indicated he will be in North Carolina, so he will miss the November 26th Council Meeting if it is held.

MAYOR GERWIG: Mayor Gerwig presented the following report:

- She stated the crosswalk issue has come up and people have reached out to her. She said the Village has to apply traffic standards and is trying to work within the parameters.

She stated at least three children have been bumped. She said so far it has been people getting knocked down by a car, but it could be much worse. She stated they have to get this to stop before someone is badly injured. She said she thinks it helps that the cars are not flying through there. She stated they are going to have to work on the kids crossing the street.

- She stated she has been complaining about Maintenance of Traffic (MOT) since she has been sitting on Council. She commended those who are managing it now, because she has seen some significant MOT that was done perfectly. She said it is still annoying to have lanes shut down, but they are shutting down lanes properly. She stated it has been taken to the next level. She said she thinks it is very important, because safety in construction zones is always a problem.
- She acknowledged the recent passing of Dennis Masch, American Legion Post 390, and Gina Sauber, Yesteryear Village.

Mr. Schofield suggested that staff develop a policy regarding criteria for placing someone on the Founder's Plaque. He said they may also want to consider renaming it, because he has talked to a few people about who would be appropriate for that plaque. He stated they are reaching a point where there are people who are deserving of recognition and who have the kind of impact on Wellington that our Founders did, but they are not Founders. He said staff will have this ready for Council at the December 9, 2019 Agenda Review.

Mr. Schofield stated the earliest staff can do anything regarding the CVS building would be November 25, 2019. He suggested rather than have a separate meeting that Council discuss it at the December 10th meeting. Council agreed to meet on November 26, 2019.

13. ADJOURNMENT

There being no further business to come before the Village Council, the meeting was adjourned at approximately 8:52 PM.

Approved:

Anne Gerwig, Mayor

Chevelle D. Nubin, Village Clerk