

APRIL 15, 2008

A Regular Meeting of the City Commission of the City of Delray Beach, Florida, was called to order by Vice-Mayor Brenda Montague in the Commission Chambers at City Hall at 6:00 p.m., Tuesday, April 15, 2008.

1. Roll call showed:

Present - Commissioner Gary Eliopoulos
Commissioner Fred Fetzer
Commissioner Woodie McDuffie
Vice-Mayor Brenda Montague

Absent - Mayor Rita Ellis

Also present were - David T. Harden, City Manager
Susan A. Ruby, City Attorney
Lanelda Gaskins, Acting Deputy City Clerk

2. The opening prayer was delivered by Father Danis Ridore with St. Vincent Ferrer Catholic Church.

3. The Pledge of Allegiance to the flag of the United States of America was given.

4. **AGENDA APPROVAL.**

Mr. Eliopoulos requested that **Item 8.C., Service Authorization No. 1.7/PGAL** of the Consent Agenda be moved to the Regular Agenda as **Item 9.A.A.** Also, he requested that **Item 8.D., Traffic Signal Modification/Palm Beach County/N.E. 4th Street Improvements** of the Consent Agenda be moved to the Regular Agenda as **Item 9.A.A.A.**

Mr. Fetzer moved to approve the Agenda as amended, seconded by Mr. McDuffie. Upon roll call the Commission voted as follows: Mr. Fetzer – Yes; Mr. McDuffie – Yes; Vice-Mayor Montague – Yes; Mr. Eliopoulos – Yes. Said motion passed with a 4 to 0 vote.

5. **APPROVAL OF MINUTES:**

Mr. Eliopoulos moved to approve the Minutes of the Regular Meeting of April 1, 2008, seconded by Mr. McDuffie. Upon roll call the Commission voted as follows: Mr. McDuffie – Yes; Vice-Montague – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes. Said motion passed with a 4 to 0 vote.

Mr. McDuffie moved to approve the Minutes of the Workshop Meeting of April 8, 2008, seconded by Mr. Fetzer. Upon roll call the Commission voted as follows: Vice-Mayor Montague – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes. Said motion passed with a 4 to 0 vote.

6. PROCLAMATIONS:

6.A. Municipal Clerk’s Week – May 4-10, 2008

Vice-Mayor Montague read and presented a proclamation hereby proclaiming May 4 through May 10, 2008 as Municipal Clerk’s Week. Lanelda Gaskins, Acting Deputy City Clerk, came forward to accept the proclamation.

6.B. National Public Works Week – May 18-24, 2008

Vice-Mayor Montague read and presented a proclamation hereby proclaiming the week of May 18 through May 24, 2008 as National Public Works Week. Richard Hasko, Director of Environmental Services, came forward to accept the proclamation.

6.C. National Historic Preservation Month – May 2008

Vice-Mayor Montague read and presented a proclamation hereby proclaiming May 1, 2008 through May 31, 2008 as National Historic Preservation Month. Stephanie Shipley, Delray Beach Historical Society, came forward to accept the proclamation.

7. PRESENTATIONS:

7.A. Delray Camera Club Awards Presentation

Vice-Mayor Montague stated the Delray Camera Club is a group of amateur and professional photographers who meet twice a month to learn more about photography from one another and from informative workshops, lectures, slide shows, field trips and monthly competitions. The club’s exhibit this year is called “Reflections of South Florida 2008.”

Vice-Mayor Montague introduced the winners of this year’s competition and presented each of them with a Certificate of Achievement.

First Place:

Tom Rasmussen – “Roseatte Spoonbill”

Second Place:

Stuart Freedman – “Egrets Together”

Third Place:

Judy Goldston – “Miami Snow Globe”

7.B. Green Task Force Presentation

Nancy Schneider, Chair of the Green Task Force, noted that the following Green Task Force members are also present in the audience this evening: Dan Sloan, John Koenig, Joe Snider, and Karla Vaillancourt.

Ms. Schneider stated the first meeting for the Green Task Force was held on February 27, 2008 and noted in the last six weeks the Task Force has accomplished a lot. She stated green is about sustainability and noted that what they do now should not negatively affect future generations (i.e. economic, environmental, livability). Ms. Schneider stated the action plan for the Green Task Force was to think about priorities and the biggest payback in terms of results and benefits for what they would do for the City. The criteria was the cost of the programs, the benefits, resilience, carbon reductions and also green jobs are some of the things the Task Force is looking at.

Ms. Schneider stated the Green Task Force created a website called sustainabledeley.org and noted that a couple of weeks ago she was in Tallahassee attending a conference with people all over the State and they were really impressed with the website.

Mr. Fetzer congratulated the Green Task Force for getting off to a great start and noted the Commission had high expectations of this group because of the people the Commission appointed to the task force. He stated with the limited resources that the City has and with the current environment we have to look for things that have the biggest pay back. Mr. Fetzer thanked the Green Task Force for what they are doing and feels their input is going to be very valuable to the City.

7.C. City of Delray Beach Residents Academy Certificates – Janet Meeks (ADDENDUM)

Janet Meeks, Education Coordinator, stated she is very proud to present the 13th graduating class and noted this was one of the best attendance groups so far. Mrs. Meeks and Vice-Mayor Montague presented City of Delray Beach Residents Academy Certificates to the following individuals:

**Donna Beldowicz
Evelyn Bandel
Saul and Rosalyn Elfman
Laura Fay
Evelyn and Arnold Fine
Lester Fishbein
Patsy Fox
Judith Giovino
Lowell and Joan Kaplan
Kristina Maricic
Jeff Meiselman**

**Dianne and Patrick Mercardante
Mary Eve Minieka
Justin Nannariello
Clayton Peart
Ben Soto
Kirsten Stanley
Amanda Wallace
Helen and Stanley Wasserstein
Angela Williams**

8. CONSENT AGENDA: City Manager Recommends Approval.

8.A. ACCEPTANCE OF EASEMENT DEED/WALLACE DODGE:

Approve and accept an easement deed for the installation of a water and sewer easement at Maroone Chrysler Jeep Dodge located at 1001 and 1111 Linton Boulevard.

8.B. REQUEST FOR SIDEWALK DEFERRAL/413 S.W. 6th AVENUE:

Approve a request to defer the installation of a sidewalk in front of 413 S.W. 6th Avenue.

8.C. SERVICE AUTHORIZATION NO. 1.7/PGAL:

Approve Service Authorization No. 1.7 to PGAL in the amount of \$10,367.50 for the additional Threshold Inspection Services required for the completion of the Old School Square Parking Garage Project. Funding is available from 380-4150-572-63.29 (2004 G.O. Bond/Improvements Other/Old School Square Parking Garage).

8.D. TRAFFIC SIGNAL MODIFICATION/PALM BEACH COUNTY/N.E. 4th STREET IMPROVEMENTS:

Approve payment in the amount of \$82,170.50 to Palm Beach County for the modification of traffic signals at the intersections of N.E. 5th and N.E. 6th Avenue at N.E. 4th Street. Funding is available from 448-5461-538-65.31 (Storm Water Utility Fund/Other Improvements/N.E. 4th St- N.E. 5th NE 6th).

8.E. S.E.-N.E. 5TH AVENUE RRR FUNDING/FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT):

Approve and authorize the Mayor to write a letter to the Florida Department of Transportation (FDOT) requesting that FDOT enter into an agreement with the City to combine FDOT's S.E.-N.E. 5th Avenue resurface, restore and rehabilitate (RRR) funding with the City's proposed beautification project and requesting that the City handle the design and construction of the combined funded project.

8.F. DUI GRANT APPLICATION/FLORIDA DEPARTMENT OF TRANSPORTATION:

Authorize staff to submit an application to the Florida Department of Transportation (FDOT) Highway Safety Grant award in the amount of \$110,376.00 for funding for the Police Department's Driving Under the Influence (DUI) program. The grant covers 50% of the salary for the DUI Enforcement Officer. Funding is available from 001-2115-521-12.10 (General Fund/Regular Salaries).

8.G. BULLETPROOF VEST GRANT/DEPARTMENT OF JUSTICE:

Authorize staff to submit an application to the Department of Justice for funding in the amount of \$13,275.45 for 45 vests for the Bulletproof Vest Program.

8.H. MUTUAL AID AGREEMENT/PALM BEACH COUNTY LAW ENFORCEMENT AGENCIES:

Approve a mutual aid agreement by and among Palm Beach County law enforcement agencies which permits voluntary cooperation and assistance of a routine law enforcement nature across jurisdictional lines, and provides for the rendering of assistance in a law enforcement emergency.

8.I. MUTUAL AID AGREEMENT/PALM BEACH COUNTY SHERIFF'S OFFICE (PBSO): Approve a mutual aid agreement between the City and the Palm Beach County Sheriff's Office (PBSO) for law enforcement assistance to jointly address aggressive driving behavior within the City and neighboring unincorporated areas of Palm Beach County.

8.J. PURCHASE ORDER INCREASE/CHAZ EQUIPMENT COMPANY, INC.: Approve an increase of \$22,800.00 to purchase order #649857, Chaz Equipment Company, Inc., for modifications to turn lanes onto East Atlantic Avenue for the U.S. 1 Temporary Improvements Project. Funding is available from 334-4141-572-65.99 (General Construction Fund/Capital Outlay/S.E.-N.E. 5th & 6th Avenue-S.E. 4th N.E.).

8.K. SPECIAL EVENT REQUEST/BED RACE: Approve a special event request to allow the 11th Annual Bed Race proposed to be held on May 16, 2008 from 5:30 p.m. until 7:30 p.m., to grant a temporary use permit per LDR's Section 2.4.6.(F) for the use and closure of N.E. 2nd Avenue between N.E. 2nd Street and N.E. 3rd Street, to authorize staff support for traffic control and security, EMS assistance, trash removal and clean up, barricading, use and set up of the small stage, and preparation and installation of event signage; contingent on the sponsor providing a certificate of liability insurance.

8.L. REVIEW OF APPEALABLE LAND DEVELOPMENT BOARD ACTIONS: Accept the actions and decisions made by the Land Development Boards for the period March 31, 2008 through April 11, 2008.

8.M. AWARD OF BIDS AND CONTRACTS:

- 1.** Bid award to Randolph & Dewdney Construction, Inc. in the amount of \$148,757.44 for the construction of the Fire Station No. 1 Wind Retrofit Project. Funding is available from 334-2311-522-62.87 (General Construction Fund/Buildings/Storm Hardening).
- 2.** Contract award to All Florida Generator Installations, Inc. in the amount of \$45,118.00 for the emergency backup generator for the new Information Technology (IT) Building. Funding is available from 334-6112-519-62.85 (General Construction Fund/Capital Outlay/City Hall Exp-IT Building).
- 3.** Contract award to Bell South in the amount of \$10,205.52 annually for a three (3) year contract for one (1) Primary Rate ISDN circuit for the support of the telephone lines at City Hall, the Community Center and the City Attorney's Office. Funding is available from 001-1802-512-41.10, 001-1802-512-41.10, and 001-1611-514-41.10 (General Fund/Telephone Expenses (General Fund/Telephone Expense)).

4. Contract award to McCabe Brothers Construction Corporation in the amount of \$177,392.00 for renovations to the Atlantic Dunes Park Boardwalk. Funding is available from 334-4170-572-63.48 (General Construction Fund/Improvements Other/Atlantic Dunes Boardwalk).
5. Contract award to McCabe Brothers Construction Corporation in the amount of \$54,826.62 for renovations to the Police Department Briefing Room, Report Writing and Mail Room. Funding is available from 334-2111-521-46.10 (General Construction Fund/Repair & Maintenance Services/Building Maintenance).
6. Contract award to Technical Inspections, Inc. in the amount of \$16,725.00 for Cleaning the Wet Well in Lift Station No. 50 on Lowson Boulevard. Funding is available from 442-5178-536-68.15 (Water/Sewer Renewal and Replacement Fund/Improvements Other/Lift Station Rehabilitation).
7. Contract award to Technical Inspections, Inc. in the amount of \$30,100.00 for rehabilitation of Lift Stations No. 94A, 95 and 107. Funding is available from 442-5178-536-68.15 (Water/Sewer Renewal and Replacement Fund/Improvements Other/Lift Station Rehabilitation).
8. Purchase award to Duval Ford in the amount of \$27,534.00 for the purchase of two (2) F-150 4x2 Pick-Up Trucks including accessories and warranty via the Florida Sheriff's Association Rollover Contract #06-14-0821, Specification #33. Funding is available from 501-3312-591-64.20 (Central Garage Fund/Automotive).
9. Purchase award to HD Supply Waterworks, LTD in the amount of \$40,436.53 for various piping materials to be installed by the City's in-house construction crew for the Lakeview Golf Course Reclaimed Water Project. Funding is available from 441-5181-536-65.96 (Water/Sewer Fund/Other Improvements/Reclaimed Water Transmission).
10. Purchase award to EVS in the amount of \$18,976.00 for the purchase of two (2) T3 Personal Electric Mobility Vehicles for the Police Department. Funding is available from 115-2111-521-64.90 (Special Projects Fund/Machinery/Equipment/Other Machinery Equipment).
11. Bid award to multiple vendors in the estimated annual amount of \$187,000.00 for the purchase of chemicals and fertilizers for the City. Funding is available from 001-4131-572-52.26 (General Fund/Operating Supplies/Gardening Supplies), 119-4144-572-52.21 (Beautification Trust Fund/Operating Supplies/Chemicals), 001-4131-572-52.21 (General Fund/Operating

Supplies/Chemicals), 445-4714-572-52.26 (D.B. Municipal Golf Course/Operating Supplies/Gardening Supplies), and 446-4714-572-52.26 (Lakeview Golf Course/Operating Supplies/Gardening Supplies).

Mr. Fetzer moved to approve the Consent Agenda as amended, seconded by Mr. Eliopoulos. Upon roll call the Commission voted as follows: Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes; Vice-Mayor Montague – Yes. Said motion passed with a 4 to 0 vote.

9. REGULAR AGENDA:

9.A.A. SERVICE AUTHORIZATION NO. 1.7/PGAL: Approve Service Authorization No. 1.7 to PGAL in the amount of \$10,367.50 for the additional Threshold Inspection Services required for the completion of the Old School Square Parking Garage Project. Funding is available from 380-4150-572-63.29 (2004 G.O. Bond/Improvements Other/Old School Square Parking Garage).

Richard Hasko, Director of Environmental Services, stated this is a service authorization for PGAL (prime consultants for the Old School Square Garage). Staff is in the process of trying to final out all of the outstanding invoicing for the miscellaneous tasks that occur during the course of the project. He stated the total cost for the testing and inspections exceeded the estimated amount of \$10,367.50 for additional geotechnical work that occurred early on during the garage construction. Mr. Hasko stated staff had concerns when they first started the project because of experiences on similar types of construction in the downtown area of excessive vibration because of the way the soils and the stabilization material and the pilings were being compacted on the site. Mr. Hasko stated because of that and trying to be very sure to be conservative about not having any damage to any of the adjacent buildings, particularly being so close to Old School Square and the gymnasium, staff had their geotechnical consultant out there doing a lot more monitoring than anticipated and unfortunately it has taken this long to catch up with the billing.

Mr. Eliopoulos stated the testing portions was pretty much for the soil testing. Mr. Hasko stated the testing was for the soil testing and not for any of the structure. Mr. Eliopoulos stated this work has already been done and now the Commission is approving it and he would like to see this get approved prior to the work being done. Mr. Eliopoulos stated in the future he would like to have this set up where we have some kind of control of it just to make sure it is not being abused and he would like to see this before the work is done.

Mr. Fetzer inquired about the Construction Manager at Risk project and the guaranteed maximum price and asked why this would not be covered under the scope of that. In response, Mr. Hasko stated the CM at Risk scope was for the GMP (Guaranteed Maximum Price) and when you get to the GMP you have a set of plans and you are ready to go to work and you have an established price for that and it is for the construction scope. For example, Mr. Hasko stated the testing is part of the consultants'

scope of services primarily because you do not want the testing lab who is actually doing the testing on the materials and the construction that the CM is installing to be working for the CM. He stated it also gives the City (the owner) better control over those consulting costs. Mr. Hasko stated it would have been difficult on this particular contract because it was a cumulative thing going on while the construction was happening.

Mr. Eliopoulos moved to approve Item 9.A.A. (Service Authorization No. 1.7), seconded by Mr. McDuffie. Upon roll call the Commission voted as follows: Mr. Fetzer – Yes; Mr. McDuffie – Yes; Vice-Mayor Montague – Yes; Mr. Eliopoulos – Yes. Said motion passed with a 4 to 0 vote.

9.A.A.A. TRAFFIC SIGNAL MODIFICATION/PALM BEACH COUNTY/N.E. 4th STREET IMPROVEMENTS: Approve payment in the amount of \$82,170.50 to Palm Beach County for the modification of traffic signals at the intersections of N.E. 5th and N.E. 6th Avenue at N.E. 4th Street. Funding is available from 448-5461-538-65.31 (Storm Water Utility Fund/Other Improvements/N.E. 4th St- N.E. 5th NE 6th).

Richard Hasko, Director of Environmental Services, stated this is a request for payment to Palm Beach County in the amount of \$82,170.50 for traffic signalization modifications that were required when the City did the improvement work on N.E. 4th Street between the Federal pairs. Mr. Hasko stated this fell through the cracks in terms of getting this to the Commission for authorization to make this commitment to Palm Beach County and this was something that had to be done in order to finish the project. He stated the project was dragging out waiting for this to be done but certainly staff realizes and acknowledges that at their level they do not have the authority to make this kind of commitment. Mr. Hasko apologized to the City Commission for staff's over site.

Mr. McDuffie moved to approve Item 9.A.A.A. (Traffic Signal Modification/N.E. 4th Street Improvements), seconded by Mr. Eliopoulos. Upon roll call the Commission voted as follows: Mr. McDuffie – Yes; Vice-Mayor Montague – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes. Said motion passed with a 4 to 0 vote.

9.A. PRELIMINARY AND FINAL PLAT/MIDTOWN DELRAY: Consider approval of a preliminary plat and certification of a final plat for a 9.85 acre mixed-use development containing 116 fee-simple townhouse lots (32 of which are subject to the City Workforce Housing Ordinance) and 29,571 square feet of medical office to be platted as Midtown Delray, located at the southwest corner of Linton Boulevard and Old Germantown Road, west of Park Access Road. (*Quasi-Judicial Hearing*)

Vice-Mayor Montague read into the record the City of Delray Beach procedures for a Quasi-Judicial Hearing for this item and all subsequent Quasi-Judicial Hearings.

Lanelda Gaskins, Acting Deputy City Clerk, swore in those individuals who wished to give testimony on this item.

Vice-Mayor Montague asked the Commission to disclose their ex parte communications. Mr. McDuffie stated he had two emails; one email was on the current condition of the property and the second one on actually how the City allowed Blood's to sell the property to begin with and there was no reply. Vice-Mayor Montague stated she too received the same emails and she assumes that these were forwarded to the City Clerk. She stated she also had a conversation with Michael Weiner. Mr. Eliopoulos stated he received the same emails and there was no response. Mr. Eliopoulos stated he did meet with the applicant and Michael Weiner.

Paul Dorling, Director of Planning and Zoning, entered the Planning and Zoning Department project file #2008-069 into the record.

Mr. Dorling stated this plat was before the Commission on March 18, 2008 at which time they recommended for it to be rescheduled to a time certain of April 1, 2008. There was direction given at that time that the two areas of conditions of approval that were granted on December 11, 2007 should be addressed prior to consideration of the plat. Those related to two things with respect to unit sizes, specifically a need to widen the garages and expand the master bedroom sizes and it was acknowledged that those two might modify the actual lot lines within the plat. Therefore, it should be appropriately addressed prior to deliberation of the Commission. He stated the second condition was that the Commission wanted a reference to the master association to maintain unified control and responsibility over certain common elements including drainage, cross access and landscaping. Mr. Dorling stated the applicant has gone back and addressed both of those items by adding the language on the plat that is before the Commission as well as changing one of the two car garages and reduced it to a one car garage and taking the corresponding dimension and spread it out over the units. He stated this gives the applicant the appropriate dimensions for the garages and they have done some floor plan changes to address the concerns relating to the master bedroom units. Staff recommends approval of the plat.

Michael Weiner, Attorney with Weiner & Aronson, P.A., 10 S.E. 1st Avenue, Delray Beach, representing the Applicant (Midtown Delray Development). He stated they are here this evening for the preliminary plat and certification of the final plat. The matter has been before the Planning and Zoning Board (P&Z), the Site Plan Review and Appearance Board (SPRAB), and the City Commission with respect to the S.A.D. zoning and has been approved with certain conditions. Mr. Weiner stated the reason for the numerous meetings and approvals is that this particular area is zoned S.A.D. (Special Activities District) and pursuant to the LDRs that a detailed Master Plan was approved by the City Commission. The matters related to the Master Plan, its zoning and the site plan are not the matters before the Commission this evening. The matters the City Commission is considering this evening are the plat and as mentioned by staff the plat was continued from December 2007 in order to address two conditions. He stated they have gained the additional space resulting in a two-car garage width of 19 feet 2 inches and they have gained spaced for the single car garages so that they are at least 12 foot in width. Mr. Weiner stated there are new layouts of the master bedrooms that almost make them square in dimension, second floor layouts were improved, kitchen sizes increased

and the hallways were eliminated with a new entryway design. He stated the appropriate language has been placed on the plat. Mr. Weiner stated all items required under Section 2.4.3. of the LDRs controlling plats have been met. Mr. Weiner stated plats are ministerial in nature and based upon uniform standards and it is out of the ordinary for plats to be subject to this scrutiny and on most occasions plats are approved on the Consent Agenda. However, Mr. Weiner stated they meet all requirements even under this stricter scrutiny. Mr. Weiner stated ample and substantial competent evidence to support the findings are in the record as a result of the staff report to the Planning and Zoning Board, staff report to the Site Plan Review and Appearance Board (SPRAB), and the five previous Board Orders that were made with respect to this particular project. Mr. Weiner stated they meet each and every provision of the Board Order and urged the Commission to make an affirmative vote.

Vice-Mayor Montague stated if anyone from the public would like to speak in favor or in opposition of Ordinance No. 22-08, to please come forward at this time.

Dr. Joseph Provenzano, 1921 S.W. 36th Avenue, Delray Beach, inquired about the depth of the garages and stated he recalls it was supposed to be 20 x 20. He stated the dimensions of the master bedroom initially was 9.6 x 15. Dr. Provenzano asked if there has been consideration now that we have lost 16 two-car garages and lost 16 parking spaces. He stated driving here this evening he looked at the library and the condos across the street with commercial down below and the setback from the driven road is more than 15 feet and in his opinion you feel like you are in a canyon. Dr. Provenzano stated this project is in a residential area and we are going to be at 15 feet setback from the driven road and feels this is sad.

Dodee Firestone, 16209 Bridlewood Circle, Delray Beach, stated the last time she saw the plat idea the medical center was going to be facing Linton Boulevard and asked if this entire dimension has been altered. She asked if on the left side of the plat are now apartments and part of the apartment complex, what happened to the green area that was located to the left of the medical complex.

Pauline Moody, 609 S.W. 8th Avenue, Delray Beach, expressed concern over what this building exactly is. She stated she does not see a reason for town homes in this area and would like some clarification as to why this project is needed.

There being no one else from the public would like to address the Commission regarding Ordinance No. 22-08, the public hearing was closed.

There was no cross-examination.

The following individual gave a brief rebuttal:

Mr. Dorling stated the configuration in relationship of the medical office and the town houses remains the same and the overall footprint of each of the residential buildings remains the same. He stated the lot lines within that original footprint have changed between what was seen previously and now.

Mr. Weiner stated the garages are 28 feet 9 inches deep and noted this far exceeds the length of a standard car which is 16 feet or less. He stated master bedrooms are 11 feet 6 inches x 13 feet 8 inches in the 22 foot unit and 12 feet x 13 feet 4 inches in the 17 foot unit. Mr. Weiner stated the architectural elevations have not changed and the green area is still the same. He stated there is no reconfiguration and is the same thing that was approved at the Site Plan Review and Appearance Board (SPRAB) which went back on April 8, 2008 for a modification all of the things one does not see when you see a plat and SPRAB has approved each one of these. Mr. Weiner stated with respect to why this project is needed, there have been 12 hearings and 5 board orders and noted that workforce housing has been a driving consideration behind this. He stated they have met the burden on that with respect to this on many different occasions.

Vice-Mayor Montague inquired about the garage depth and the loss of the parking spaces. Mr. Dorling stated they do make the parking requirement by the LDRs and they provided a significant amount of on-site guest spaces spread out throughout the community. He stated the parking requirements is based upon the number of bedroom counts so a one-garage unit may in fact require less depending on the number of bedrooms. Vice-Mayor Montague stated there was a question about which way the medical facility is facing. Mr. Dorling stated none of the original building footprints have changed with this modification or their relationship to each other.

Mr. Eliopoulos stated there was never a question with a depth to the garages but it was the width. He stated the Commission request the garages to be 18 feet minimum and they are at 19 feet plus. Mr. Eliopoulos stated the master bedrooms were actually smaller than the other rooms and now they are the largest rooms. Therefore, he stated the applicant has corrected these situations. Mr. Eliopoulos stated the plat has not changed but the actual configuration of the medical building did not seem appropriate to be facing the residents and the applicant has now flipped that building so it is facing Linton Boulevard.

Mr. Eliopoulos stated for the benefit of the public that wanted the Commission to respond to the emails, the emails are really not the Commission's issue but it is Code Enforcement. For the benefit of the public, Mr. Eliopoulos stated the plat has nothing to do with Code Enforcement and for the public that wanted the Commission to respond to that and hold this up, the plat has nothing to do with Code Enforcement that is a separate division and they are handling that.

The City Attorney briefly reviewed the Board Order with the Commission who made findings according to their consensus (attached hereto is a copy and made an official part of the minutes).

Mr. Fetzer moved to adopt the Board Order, seconded by Mr. Eliopoulos. Upon roll call the Commission voted as follows: Vice-Mayor Montague – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes. Said motion passed with a 4 to 0 vote.

At this point, the time being 7:15 p.m., the Commission moved to the duly advertised Public Hearings portion of the Agenda.

Commissioner Eliopoulos declared a conflict of interest for Item 10.A. and stepped down from the dais.

10. PUBLIC HEARINGS:

10.A. ORDINANCE NO. 22-08: Consideration of a privately sponsored rezoning from GC (General Commercial) to AC (Automotive Commercial) for a 6.28 acre parcel located on the east side of Federal Highway (a.k.a. The Ralph Buick Dealership). (*Quasi-Judicial Hearing*)

The caption of Ordinance No. 22-08 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, REZONING AND PLACING LAND PRESENTLY ZONED GENERAL COMMERCIAL (GC) DISTRICT TO AUTOMOTIVE COMMERCIAL (AC) DISTRICT; SAID LAND BEING A PARCEL LOCATED AT THE NORTHEAST CORNER OF SOUTH FEDERAL HIGHWAY (U.S. HIGHWAY NO. 1) AND FLADELL'S WAY (AVENUE "F"), AS MORE PARTICULARLY DESCRIBED HEREIN; AMENDING "ZONING MAP OF DELRAY BEACH, FLORIDA, "APRIL 2007" PROVIDING A GENERAL REPEALER CLAUSE, A SAVING CLAUSE, AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 22-08 is on file in the City Clerk's office.)

The City Attorney read the caption of the ordinance. A public hearing was held having been legally advertised in compliance with the laws of the State of Florida and the Charter of the City of Delray Beach, Florida.

Lanelda Gaskins, Acting Deputy City Clerk, swore in those individuals who wished to give testimony on this item.

Vice-Mayor Montague asked the Commission to disclose their ex parte communications. Mr. McDuffie stated he had no ex parte communications to disclose. Vice-Mayor Montague stated she spoke with Mr. Weiner concerning the status of the parcel as well as Mr. Mitch Kirschner. Mr. Fetzer stated he received ten emails; eight in favor of the rezoning and two opposed. Mr. Fetzer stated he also met with the Board of Directors of the Tropic Isle Association and met with the President and their Boards. Mr. Fetzer stated he turned his emails over to the City Clerk.

Paul Dorling, Director of Planning and Zoning, entered the Planning and Zoning Department project file #2007-05 into the record.

Mr. Dorling stated this is a privately sponsored rezoning from GC (General Commercial) to AC (Automotive Commercial) for a 6.28 acre parcel. This is the former location of the Ralph Buick auto dealership that operated on the site from 1972 to 2005. In 2005, the Commission entertained a rezoning from AC to GC submitted by New Century Development Group for approval established with a mixed-use development consisting of 13,781 square feet of retail floor area, 13,900 square feet of office floor area, 16 condominium dwelling units, and 59 townhouse dwelling units. The associated conditional use was approved in April 2006. In November, 2006 the Planning and Zoning Board recommended approval of the rezoning request. Mr. Dorling stated it came to the Commission on December 5, 2006, and it was approved on first reading and then it was deferred. Mr. Dorling stated now the applicant would like to resurrect that rezoning request and because of the length of time it did go back for another first reading at the April 1, 2008 City Commission Meeting and it was forwarded to this for a second reading. Based upon the findings in the staff report, staff recommends approval of the request.

Michael Weiner, Attorney with Weiner and Aronson, P.A., 10 S.E. 1st Avenue, Delray Beach, stated they are here this evening to discuss the rezoning from GC (General Commercial) to AC (Automotive Commercial) with respect to the property referred to as Ralph Buick. He stated there has been substantial realignment of the real estate market since the rezoning of this property to GC. The dealership is located on the east side of Federal Highway south of Linton Boulevard that is approximately 6.82 acres and all of the properties surrounding it are developed. Mr. Weiner stated those properties along Federal Highway are commercial in nature with the significant number of properties in the area being devoted to automotive use. The original staff report for the first reading which was held April 1, 2008 confirmed that rezoning to AC met the required findings under LDR Sections 3.1.1, 3.2.2., and 2.4.5(D)(5). He stated there is also an additional staff report this evening and the Planning and Zoning Board had a recommendation unanimously for approval. The proposed AC zoning will be complimentary with the current uses to the north, south, and west of the property those are all commercial in nature and most of them are AC zoning in and of themselves. He stated even though the properties to the east are residentially zoned and contain several residential uses they are buffered by a landscape strip, a masonry wall, and Florida Boulevard which helps to mitigate any possible impact of AC. The distance from the closest residential building to the dealership is approximately 163 feet. The dealership

was in operation as a car dealership since 1972 and during that period of time the values in that residential area have increased by as much as 1,500 percent which is higher than the State average which is 330 percent. Mr. Weiner stated the existence of this use has never been a negative impact on those residential areas. He stated given the long utilization of the property for automotive use it is appropriate to allow the AC zoning designation to be re-established. He stated when directly comparing the automotive use to other uses allowed under GC those allowed under AC zoning actually result in a net reduction of intensity. Mr. Weiner made reference to a traffic generation report compiled by the ITE Trip Generation Manual and noted that new car sales generate much lower traffic than banks or drug stores which demonstrates his point on intensity of use. As it relates to traffic, automotive uses would be less intensive than commercial. He stated Section 3.2.2 which are the standards for rezoning are met because the rezoning shall result in allowing land uses which are compatible with adjacent and nearby land uses. He stated given the technological turn in the automotive industry, the technology associated with personal transportation will become more and more environmentally friendly and will be similar to any other consumer product in its sale and presentation. He stated an additional requirement is contained in Section 2.4.5(D)(5) of the LDRs and the City Commission must make a finding that the rezoning fulfills one of the reasons for which a rezoning change is being sought and noted they meet all of the reasons. Mr. Weiner made reference to recent newspaper articles demonstrating the turn in the residential market place and because of the change in the residential market throughout South Florida and in the City of Delray Beach the current zoning for residential units is no longer appropriate. Policy A.2.4 of the Future Land Use Element of the Comprehensive Plan indicates that automobile uses are a significant land use within the city and Objective A-1 of the Future Land Use Element of the Comprehensive Plan states that the property shall be redeveloped in a manner so that its use and intensity is appropriate and complimentary to those adjacent land uses. Mr. Weiner distributed articles and a memorandum from the City of San Jose, California and from Palo Alto, California and noted they discuss the contribution that automobile dealerships make to the community both as a generator of tax revenue and an employment center. He stated a forecast of the revenues and the sales tax charges that would be against those revenues would result in approximately \$150,000.00 per year added to the City's budget and in addition to whatever real estate taxes the City generates. He stated this is because sales revenues at automobile dealerships are so high that the actual percentage of the sales tax that the City is able to keep becomes significant. Mr. Weiner stated AC zoning designation is complimentary to the other surrounding automobile dealerships. The impact on any residential neighborhood has been mitigated and the proof is that there was co-existence of this use with a residential neighborhood over a 30 year period with an unprecedented increase in value five times higher than what the State average was and did not have a negative impact during its existence. Mr. Weiner stated traffic intensities are actually decreased; changes in circumstances exist so the requirements of the local ordinances are met, and the change is that there is a substantial change in the residential real estate market. The present Comprehensive Plan policies are met, the Future Land Use Map designation is consistent. The use will supply a significant source of revenue beyond its real estate tax contribution. Therefore, Mr. Weiner, for all of these reasons, urged the Commission to approve a change of zoning from GC to AC and stated all requirements

for a zoning change are met.

Vice-Mayor Montague stated if anyone from the public would like to speak in favor or in opposition of the request, to please come forward at this time.

There was no cross-examination or rebuttal.

Mr. McDuffie stated he was on the Planning and Zoning Board when these changes were made the first time and noted that he recalls the process quite well. He stated it is compatible utilization with what is on Federal Highway and supports the rezoning.

Mr. Fetzer stated he had a lot of discussion with some of the local residents in that area and for the most part they did not have a problem with changes coming back to the automotive use for some of the reasons mentioned before. He stated the residents to the east of there are concerned that we do keep a wall and that we do not have driving of vehicles in the residential neighborhood. Mr. Fetzer stated Mr. Weiner outlined things (Tab #2) that addressed many of these things and asked if this is part of the City's zoning ordinance as it now exists for AC (Automotive Commercial). Mr. Dorling stated yes it is. Mr. Fetzer stated if a new dealership comes in if this is approved then how this is all enforced. Mr. Dorling stated they would have to re-establish the use by going through the site plan process and any site plan that came in would be reviewed for consistency with these criteria. Mr. Fetzer stated if these uses and protection for residential areas are adhered to he would support the rezoning.

Mr. McDuffie moved to adopt Ordinance No. 22-08 on Second and FINAL Reading, seconded by Mr. Fetzer. Upon roll call the Commission voted as follows: Mr. Fetzer – Yes; Mr. McDuffie – Yes; Vice-Mayor Montague – Yes. Said motion passed with a 3 to 0 vote.

At this point, Commissioner Eliopoulos returned to the dais.

10.B. ORDINANCE NO. 20-08 (SECOND READING/SECOND PUBLIC HEARING): City initiated amendment to the Land Development Regulations (LDR) pertaining to Assisted Living Facilities, Continuing Care Facilities and Nursing Homes.

The caption of Ordinance No. 20-08 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS BY REPEALING SECTIONS 4.3.3(C), "ADULT CONGREGATE LIVING FACILITY" AND 4.3.3(G), "CONTINUING CARE FACILITIES", AND AMENDING SECTION 4.3.3(H), "CONVALESCENT HOMES, HOMES FOR THE AGED, NURSING HOMES,

REST HOMES", IN ORDER TO PROVIDE FOR UPDATED REGULATIONS REGARDING SAME; AMENDING SECTIONS 4.4.6, "MEDIUM DENSITY RESIDENTIAL (RM) DISTRICT", 4.4.13, "CENTRAL BUSINESS DISTRICT (CBD), 4.4.21, "COMMUNITY FACILITIES (CF) DISTRICT", 4.4.28, "CENTRAL BUSINESS DISTRICT - RAILROAD CORRIDOR (CBD-RC)", AND 4.4.29, "MIXED RESIDENTIAL OFFICE AND COMMERCIAL (MROC) DISTRICT", IN ORDER TO ALLOW ASSISTED LIVING AND CONTINUING CARE FACILITIES AS PERMITTED USES IN THESE ZONING DISTRICTS; AMENDING SECTION 4.4.9, "GENERAL COMMERCIAL (GC) DISTRICT", IN ORDER TO ALLOW ASSISTED LIVING AND CONTINUING CARE FACILITIES AS CONDITIONAL USES IN THIS ZONING DISTRICT; AMENDING SECTION 4.4.24, "OLD SCHOOL SQUARE HISTORIC ARTS DISTRICT (OSSHAD)", TO REMOVE ASSISTED CONGREGATE LIVING AND CONTINUING CARE FACILITIES FROM THE LIST OF CONDITIONAL USES IN THIS ZONING DISTRICT; AMENDING APPENDIX "A" TO REPEAL THE DEFINITIONS OF "ADULT CONGREGATE LIVING FACILITY" AND "CONVALESCENT HOMES, HOMES FOR THE AGED, NURSING HOMES, OR REST HOMES" AND ENACTING A DEFINITION OF "ASSISTED LIVING FACILITY" AND "NURSING HOME" AND PROVIDING AN UPDATED DEFINITION OF "CONTINUING CARE FACILITY"; PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 20-08 is on file in the City Clerk's office).

The City Attorney read the caption of the ordinance. A public hearing was held having been legally advertised in compliance with the laws of the State of Florida and the Charter of the City of Delray Beach, Florida.

Paul Dorling, Director of Planning and Zoning, stated these changes are to achieve compliance with the Federal Fair Housing Law and adds Assisted Living Facilities and Continuing Care Facilities as permitted uses in zoning districts that currently allow medium density residential as permitted uses. They are also added as conditional uses in zoning districts that allow medium density residential as a conditional use.

At its meeting of March 17, 2008, the Planning and Zoning Board considered the text amendment and no one spoke on the issue. The Board unanimously recommended approval on a 5 to 0 vote.

Vice-Mayor Montague declared the public hearing open. There being no one from the public who wished to address the Commission regarding Ordinance No. 20-08, the public hearing was closed.

Mr. Eliopoulos moved to adopt Ordinance No. 20-08 on Second and FINAL Reading, seconded by Mr. McDuffie. Upon roll call the Commission voted as follows: Mr. Fetzer – Yes; Mr. McDuffie – Yes; Vice-Mayor Montague – Yes; Mr. Eliopoulos – Yes. Said motion passed with a 5 to 0 vote.

At this point, the Commission moved to **Item 11, Comments and Inquiries on Non-Agenda Items from the City Manager and the Public.**

11.A. City Manager's response to prior public comments and inquiries.

The City Manager had no response to prior public comments and inquiries.

11.B. From the Public.

None.

At this point, the Commission moved to **Item 9.B. of the Regular Agenda.**

9.B. CONDITIONAL USE EXTENSION REQUEST/PARC PLACE NORTH AT DELRAY BEACH: Consider a conditional use extension request for Parc Place North at Delray Beach, a proposed multiple family and mixed-use development within the GC (General Commercial) Zoning District, located on the east side of North Federal Highway approximately 860 feet south of Gulf Stream Boulevard. (*Quasi-Judicial Hearing*)

Lanelda Gaskins, Acting Deputy City Clerk, swore in those individuals who wished to give testimony on this item.

Vice-Mayor Montague asked the Commission to disclose their ex parte communications. The Commission had no ex parte communications to disclose.

Paul Dorling, Director of Planning and Zoning, entered the Planning and Zoning Department project file #2005-384 into the record.

Mr. Dorling stated this is an extension request of the conditional use request that was approved for the North Federal Highway site north of the old drive-in site on the east side of Federal Highway. The portion that the Commission is seeing this evening is limited to the residential piece of this mixed-use development. Mr. Dorling stated this is a 3.85 acre site and includes 6,435 square feet of retail floor area 35,647 square feet of office floor area, and 30 condominium residential units and the multiple family portion of the development consists of 15 townhouse dwelling units that are located along the east side of the development.

At its meeting of April 4, 2006, the City Commission approved the conditional use associated with the proposed development to allow a multiple family residential development in the GC zoning district. At its meeting of June 28, 2006, the Site Plan Review and Appearance Board approved the Class V site plan application for the project. Because of market conditions, they are requesting an 18 month extension at this time. Mr. Dorling stated they have proceeded with certain things on the site such as demolition of the existing structures approximately one year ago. Therefore, Mr. Dorling stated this is under the category of "Construction Has Commenced". The required findings in the LDRs do not require any additional findings to be made at this time and would allow an extension request. The extension request would extend it to October 4, 2009. Staff has requested that there be a condition attached to this similar to what has been done in other sites that may be laying fallow while the market is adjusting. Staff has asked that the site be seeded, that the grass be watered in at this time and that the construction fence that is around the site be removed until construction is eminent. Staff recommends approval.

Dale Meaux, Architect with API Group, representing Parc Place North, stated they obtained approval for a conditional use previously as well as obtained site plan approval. Since that time, they have working to resolve issues to get their site plan certified and submitted construction documents to the City for building permits and they have received comments back from the City. Mr. Moe stated they are in the process of responding to the comments. In addition, he stated there is also replatting involved and that is in progress as well with the comments being responded to on the submission. He stated the market has changed and they are now re-evaluating the development plan and they are going to phase it and hold off on the residential units until the market improves. Mr. Moe stated they are continuously working on the project and expect it to come to fruition and urged the Commission to approve.

Vice-Mayor Montague stated if anyone from the public would like to speak in favor or in opposition of the conditional use extension request, to please come forward at this time.

There was no cross-examination or rebuttal.

Mr. McDuffie asked if this extends to the time construction commences. In response, Mr. Dorling stated the Code has three categories (1) "No Construction Occurred", (2) "Construction Has Occurred" and (3) "Construction Has Commenced"

which means that if more than 25% of the project is complete by the time the expiration date runs out then it is considered vested and no further extension is required.

The City Attorney briefly reviewed the Board Order with the Commission who made findings according to their consensus (attached hereto is a copy and made an official part of the minutes).

Mr. McDuffie moved to approve the Board Order as presented (approving the conditional use extension request until October 4, 2009 subject to the condition that the site is seeded and watered until the grass is established and the perimeter construction fence removed until construction is imminent), seconded by Mr. Fetzer. Upon roll call the Commission voted as follows: Mr. McDuffie – Yes; Vice-Mayor Montague – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes. Said motion passed with a 4 to 0 vote.

9.C. WAIVER REQUESTS/HISTORIC DEPOT SQUARE: Consider two waiver requests to Land Development Regulations (LDR) Section 4.6.9(D)(3)(c)(1), “Stacking Distance”, to allow a reduction in the stacking distance from the required 50 feet for a parking area that has 51 or more parking spaces; and to Section 6.1.3(B), “Sidewalk Design Requirements”, which requires a 5-foot sidewalk along both sides of Depot Road and N.W. 2nd Street for the Historic Depot Square. (*Quasi-Judicial Hearing*)

Lanelda Gaskins, Acting Deputy City Clerk, swore in those individuals who wished to give testimony on this item.

Vice-Mayor Montague asked the Commission to disclose their ex parte communications. The Commission had no ex parte communications to disclose.

Paul Dorling, Director of Planning and Zoning, entered the Planning and Zoning Department project file #2007-315 into the record.

Mr. Dorling stated this is a request for the City Commission to consider two waivers from the LDRs associated with the Class V site plan for the Historic Depot Square project: (1) LDR Section 4.6.9(D)(3)(c)(1), which requires a minimum stacking distance of 50 feet for a parking area that has 51 or more parking spaces and (2) LDR Section 6.1.3(B), which requires a 5-foot sidewalk along both sides of Depot Road and N.W. 2nd Street.

At its meeting of March 26, 2008, the Site Plan Review and Appearance approved the Class V site plan for the Historic Depot Square project.

Bob Currie, Architect with Currie Sowards Aguila Architects, gave a brief overview of the site plan.

Vice-Mayor Montague stated if anyone from the public would like to speak in favor or in opposition of the waiver requests, to please come forward at this time. There being no one from the public who wished to address the Commission regarding the waiver requests, the public hearing was closed.

There was no cross-examination or rebuttal.

Mr. McDuffie stated when he drove this many months ago it seems to him that in this commercial business off of 2nd that there was semi with a 40 foot trailer in there. He asked if the entrance circle is going to be able to handle that turning radius to get a semi in there. In response, Mr. Currie stated this is large enough for a fire truck to go around it (90 feet).

Vice-Mayor Montague inquired about the buffering along the railroad tracks and asked if there is something in the ordinances that require additional buffering. Mr. Dorling stated the City has a minimum requirement between vehicular travel lanes and property lines which in this case is five feet.

The City Attorney briefly reviewed the Board Order with the Commission who made findings according to their consensus (attached hereto is a copy and made an official part of the minutes).

Mr. Eliopoulos moved to approve the Board Order as presented, seconded by Mr. McDuffie. Upon roll call the Commission voted as follows: Vice-Mayor Montague – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes. Said motion passed with a 4 to 0 vote.

9.D. SPECIAL EVENT REQUEST/HAITIAN FLAG DAY EVENT:
Consider a special event request for the Haitian Flag Day Celebration sponsored by Toussaint L'Ouverture High School on May 18, 2008 at Old School Square from noon until 10:00 p.m., to grant a temporary use permit per LDR's Section 2.4.6.(F) for use of a part of the Old School Square surface lot, a portion of NE 1st Avenue, and the east side of the gravel lot on NE 1st Avenue for vendor parking; to authorize staff support for security and traffic control, EMS assistance, trash removal and clean up, barricading, generator use, and event signage; contingent upon receipt of a certificate of liability insurance. The event sponsor has requested financial assistance.

Robert A. Barcinski, Assistant City Manager, stated this is a request for the Commission to endorse the Haitian Flag Day Celebration sponsored by Toussaint L'Overture High School on May 18, 2008 from noon until 10:00 p.m. at Old School Square to grant a temporary use permit for use of a part of the Old School Square surface lot portion of N.E. 1st Avenue and use of the east side of the gravel lot on N.E. 1st Avenue/1st Street for vendor parking. Commission is also requested to authorize staff support for security and traffic control, EMS assistance, trash removal and clean up, barricading, generator use, and event signage. The applicant is also requesting financial assistance.

The estimated overtime for this event is \$5,575.00 and trash boxes at \$350.00 for a total of \$5,925.00. Per event policies and procedures the charge to the event sponsor would be approximately \$3,325.00. Staff recommends approval without the financial assistance contingent on the receipt of the required insurance certificates.

Mr. McDuffie moved to approve the Special Event Request for the Haitian Flag Day Celebration with staff recommendation that the City comply with the existing event policies and procedures, seconded by Mr. Eliopoulos. Upon roll call the Commission voted as follows: Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. McDuffie – Yes; Vice-Mayor Montague – Yes. Said motion passed with a 4 to 0 vote.

9.E. APPOINTMENT OF OUTSIDE COUNSEL/REVIEW ORDINANCE REGARDING TRANSIENT RENTALS: Consider approval of outside counsel Weiss, Serota, Helfman, Pastoriza, Cole and Boniske, P.L. to assist in the review of an ordinance regarding transient rentals.

The City Attorney stated staff is requesting appointment of outside counsel to review ordinances regarding transient rentals.

Mr. Fetzer moved to appoint outside counsel Weiss, Serota, Helfman, Pastoriza, Cole and Boniske, P.L. to assist in the review of an ordinance regarding transient rentals, seconded by Mr. McDuffie. Upon roll call the Commission voted as follows: Mr. Fetzer – Yes; Mr. McDuffie – Yes; Vice-Mayor Montague – Yes; Mr. Eliopoulos – Yes. Said motion passed with a 4 to 0 vote.

12. FIRST READINGS:

12.A. NONE.

At this point, the Commission moved to **Item 13, Comments and Inquiries on Non-Agenda Items.**

13. COMMENTS AND INQUIRIES ON NON-AGENDA ITEMS.

13.A. City Manager

The City Manager stated with regard to the auto dealership and why he presented articles from California, they distribute sales tax to cities based on it being collected there and that is not the case in Florida. He stated in Florida, it is distributed to the County based on the point of collection and within the County it is distributed basically on population.

13.B. City Attorney

The City Attorney had no comments and inquiries on non-agenda items.

13.C. **City Commission**

13.C.1. **Mr. Fetzer**

Mr. Fetzer commented about the deadlines for the Wi-Fi Agreement. The City Attorney stated she believes the deadline is April 19th and anticipates that the Commission will be discussing the status of the Wi-Fi Agreement at the very next meeting after April 19th if they have not performed.

Secondly, he stated the Commission did have several public meetings regarding narrowing the pairs for Federal Highway and a lot of the reasons were discussed very thoroughly as far as why the Commission felt from a safety standpoint this area should occur. Mr. Fetzer stated now there is a temporary set-up that is a trial and he feels this is what has caught a lot of people by surprise. Mr. Fetzer stated some people were not aware of the trial or the appearance of the temporary set-up and he feels this is what has caught a lot of people off guard and why the Commission is receiving a lot of complaints about it.

Mr. Eliopoulos stated even if the Commission communicated the best way they thought they could have, in his opinion, there would still be people who do not read or see the City's website and would still be calling inquiring about what is going on.

The City Manager stated there will be signage installed.

13.C.2. **Mr. Eliopoulos**

Mr. Eliopoulos stated he has received emails and telephone calls from residents regarding what is going on with Federal Highway. He feels that the City needs to get a little more information out to the general public. For the most part, Mr. Eliopoulos stated he is still on board with this and believes this is the future for Delray Beach. He stated maybe it is not going to be the most appealing thing until money comes through but he still believes in this wholeheartedly.

The City Manager stated staff got the extra information up on the City's website this afternoon.

13.C.3. **Mr. McDuffie**

With regard to Federal Highway, Mr. McDuffie stated there have been many discussions and meetings with regard to narrowing the pairs for quite some time.

Secondly, he stated Circle on the Square was a fabulous event and he commended Joe Gillie and others who helped organize the event. Mr. McDuffie stated the event was well attended and was a very successful event.

Mr. McDuffie stated about twelve new bills regarding Ad Valorem taxation hit the House floor that he is looking at but he has not had a chance to review them. He stated the Florida League of Cities has been sending out information on some of them. He stated they continue to want these things up on the preliminary tax roll which is July 1, 2008 and if there is any impact to the City he will pass this on.

Lastly, Mr. McDuffie stated there are now designated funds for funding tri-rail.

13.C.4. Vice Mayor Montague

Vice Mayor Montague commented about the photographs taken by the Delray Camera Club of sites throughout our community.

Secondly, she and Commissioner McDuffie gave out the trophy and spoke on International television USTA (United States Tennis Association) for Youth Tennis this weekend.

Vice Mayor Montague concurred with comments expressed by Mr. Eliopoulos and stated the Commission has been talking about this a long time. She stated the Community Redevelopment Agency (CRA) paid for studies that were done and it has been studied extensively. Vice Mayor Montague stated although there is some negative feedback but it has been proven that this is going to be the best thing for our city. She stated it is about future growth and the whole concept that has been talked about for years about making this a pedestrian friendly downtown. In addition, she stated it connects Atlantic Avenue east of Federal Highway and west of Federal Highway. Vice Mayor Montague stated it does all of these things that the City has worked on for so long and so hard on she will be behind the effort of moving this forward.

Vice Mayor Montague stated the Run for Pun on Saturday was wonderful. She stated a number of cities were represented besides Delray Beach and noted that Palm Beach County Sheriff's Office, City of Boynton Beach, City of Davie, City of West Palm Beach, and the City of Plantation were also present.

She stated Circle on the Square at Old School Square was great.

Vice Mayor Montague stated the Art League Showcase of Young Artists was last night and commented that they do an incredible job.

Lastly, Vice Mayor Montague stated everyone misses Mayor Ellis very much and feels she does a wonderful job.

There being no further business, Vice-Mayor Montague declared the meeting adjourned at 8:08 p.m.

Lanelda S. Gaskins
Acting Deputy City Clerk

ATTEST:

Rita Ellis
MAYOR

The undersigned is the City Clerk of the City of Delray Beach, Florida, and the information provided herein is the Minutes of the Regular City Commission Meeting held on April 15, 2008, which Minutes were formally approved and adopted by the City Commission on May 6, 2008.

Lanelda S. Gaskins
Acting Deputy City Clerk

NOTE TO READER:

If the Minutes you have received are not completed as indicated above, this means they are not the official Minutes of the City Commission. They will become the official Minutes only after review and approval which may involve some amendments, additions or deletions as set forth above.

IN THE CITY COMMISSION
CHAMBERS OF THE CITY OF
DELRAY BEACH, FLORIDA

PRELIMINARY AND FINAL PLAT APPROVAL MIDTOWN DELRAY

**ORDER OF THE CITY COMMISSION
OF THE CITY OF DELRAY BEACH, FLORIDA**

1. This preliminary and final plat approval request has come before the City Commission on April 15, 2008.
2. The Applicant and City staff presented documentary evidence and testimony to the City Commission pertaining to the preliminary and final plat approval requests for the Midtown Delray Development. All of the evidence is a part of the record in this case. Required findings are made in accordance with Subsection I.

I. LDR REQUIREMENTS:

LDR Section 3.1.1 Required Findings: Pursuant to Section 3.1.1 the following provisions must be met for land development applications:

(A) **Future Land Use Map:** The resulting use of land or structures must be allowed in the zoning district within which the land is situated and said zoning must be consistent with the applicable land use designation as shown on the Future Land Use Map.

(B) **Concurrency:** Concurrency as defined pursuant to Objective B-2 of the Future Land Use Element of the Comprehensive Plan must be met and a determination made that the public facility needs, including public schools, of the requested land use and/or development application will not exceed the ability of the City and The School District of Palm Beach County to fund and provide, or to require the provision of, needed capital improvements in order to maintain the Levels of Service Standards established in Table CI-GOP-1 of the adopted Comprehensive Plan of the City of Delray Beach.

(C) **Consistency:** A finding of overall consistency may be made even though the action will be in conflict with some individual performance standards contained within Article 3.2, provided that the approving body specifically finds that the beneficial aspects of the proposed project (hence compliance with some standards) outweighs the negative impacts of identified points of conflict.

(D) **Compliance with LDRs:** Whenever an item is identified elsewhere in these Land Development Regulations (LDRs), it shall specifically be addressed by the body taking final action on a land development application/request. Such items are found in Section 2.4.5(J) and in special regulation portions of individual zoning district regulations.

Does the preliminary and final plat meet the requirements of Section 3.1.1?

Yes 4 No 0

LDR Section 3.2.3 Standards for Plat Actions: Pursuant to Section 3.2.3 the following provisions must be met for plat actions:

(A) Building design, landscaping, and lighting (glare) shall be such that they do not create unwarranted distractions or blockage of visibility as it pertains to traffic circulation.

(B) Separation of different forms of transportation shall be encouraged. This includes pedestrians, bicyclists, and vehicles in a manner consistent with policies found under Objectives D-1 and D-2 of the Transportation Element.

(C) Open space enhancements as described in policies found under Objective B-1, of the Open Space and Recreation Element are appropriately addressed.

(D) The City shall evaluate the effect that any street widening or traffic circulation modification may have upon an existing neighborhood. If it is determined that the widening or modification will be detrimental and result in a degradation of the neighborhood, the project shall not be permitted.

(E) Development of vacant land which is zoned for residential purposes shall be planned in a manner which is consistent with adjacent development regardless of zoning designations.

(F) Vacant property shall be developed in a manner so that the future use and intensity are appropriate in terms of soil, topographic, and other applicable physical considerations; complementary to adjacent land uses; and fulfills remaining land use needs.

(G) Redevelopment and the development of new land shall result in the provision of a variety of housing types which shall continue to accommodate the diverse makeup of the City's demographic profile, and meet the housing needs identified in the Housing Element. This shall be accomplished through the implementation of policies under Objective B-2 of the Housing Element.

(H) The City shall consider the effect that the proposal will have on the stability of nearby neighborhoods. Factors such as noise, odors, dust, traffic volumes and circulation patterns shall be reviewed in terms of their potential to negatively impact the safety, habitability and stability of residential areas. If it is determined that a proposed development will result in a degradation of any neighborhood, the project shall be modified accordingly or denied.

(I) Development shall not be approved if traffic associated with such development would create a new high accident location, or exacerbate an existing situation causing it to become a high accident location, without such development taking actions to remedy the accident situation.

(J) Tot lots and recreational areas, serving children from toddler to teens, shall be a feature of all new housing developments as part of the design to accommodate households having a range of ages. This requirement may be waived or modified for residential developments located in the downtown area, and for infill projects having fewer than 25 units.

Does the preliminary and final plat meet the requirements of Section 3.2.3?

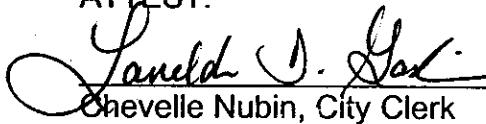
Yes 4 No 0

3. The City Commission has applied the Comprehensive Plan and LDR requirements including, but not limited to, Section 2.4.5(J) pertaining to major subdivisions in existence at the time the preliminary and final plat applications were submitted and finds that the LDRs are met and that the determinations set forth in this Order are consistent with the Comprehensive Plan.

4. The City Commission finds there is ample and competent substantial evidence to support its findings in the record submitted and adopts the facts contained in the record including but not limited to the staff reports, testimony of experts and other competent witnesses supporting these findings.

5. Based on the entire record before it, the City Commission approves X denies _____ the preliminary and final plat for Midtown. The City Commission hereby adopts this Order this 15th day of April, 2008, by a vote of 4 in favor and 0 opposed.

ATTEST:


Chevelle Nubin, City Clerk


Brenda Montague, Vice-Mayor

IN THE CITY COMMISSION
CHAMBERS OF THE CITY OF
DELRAY BEACH, FLORIDA

**EIGHTEEN MONTH EXTENSION REQUEST FOR CONDITIONAL USE APPROVAL
GRANTED TO PARC PLACE NORTH AT DELRAY BEACH FOR STAND ALONE
MULTIPLE FAMILY DEVELOPMENTS IN THE GC (GENERAL COMMERCIAL)
ZONING DISTRICT (THE EXTENSION REQUEST)**

**ORDER OF THE CITY COMMISSION
OF THE CITY OF DELRAY BEACH, FLORIDA**

1. The above named eighteen month conditional use extension request has come before the City Commission on April 15, 2008.

2. This conditional use extension request comports with the future land use element, is concurrent with the Comprehensive Plan and is consistent with the goals, policies and objectives of the City's Comprehensive Plan.

3. The Applicant and City staff presented documentary evidence and testimony to the City Commission pertaining to the conditional use extension request for the Parc Place North at Delray Beach development. All of the evidence is a part of the record in this case. Required findings are made in accordance with LDR Section 2.4.4(F)(1) and (F)(2).

4. Section 2.4.4(F)(1) requires certain preliminary requirements to be met, such as:

A written request submitted at least 45 days prior to the expiration date;

The request must set forth the basis and reason for the extension;

The request must be considered by the same body that granted the approval;

The extension, if granted, shall be for a term of 18 months unless otherwise stated.

Have the preliminary requirements of Section 2.4.4(F)(1) been met?

Yes 4 No 0

5. In making a determination under LDR Section 2.4.4(F)(2) the Commission shall consider the following regarding the diligence and good faith of the Developer:

When the construction commenced;

Item 9.B

4/15/08

The extent to which construction has proceeded;

The extent to which there has been a bonafide continuous effort to develop but because of circumstances beyond the control of the developer, it was not possible to meet the 25% standard.

Has the Developer shown diligence and good faith to commence and complete construction of the Parc Place North Development Project?

Yes 4 No 0

6. The comments and notes set forth in the staff report are hereby incorporated herein.

7. The City Commission has applied the Comprehensive Plan and LDR requirements in existence at the time the original site plan was submitted and finds that its determinations set forth in this Order are consistent with the Comprehensive Plan.

8. The City Commission finds there is ample and competent substantial evidence to support its findings in the record submitted and adopts the facts contained in the record including but not limited to the staff reports, testimony of experts and other competent witnesses supporting these findings.

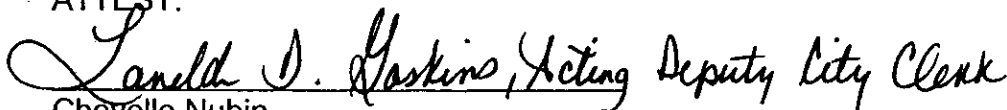
10. Based on the entire record before it, the City Commission approves X denies the conditional use extension request to allow the previous conditional use approval to be valid until October 4, 2009 subject to the condition that states:

That the site is seeded and watered until the grass is established and the perimeter construction fence removed until construction is imminent.

The City Commission hereby adopts this Order this 15th day of April, 2008, by a vote of 4 in favor and 0 opposed.


Brenda Montague, Vice-Mayor

ATTEST:


Chevelle Nubin
City Clerk

Chevelle Nubin
City Clerk

IN THE CITY COMMISSION
CHAMBERS OF THE CITY OF
DELRAY BEACH, FLORIDA

WAIVER REQUESTS FOR HISTORIC DEPOT SQUARE

**ORDER OF THE CITY COMMISSION
OF THE CITY OF DELRAY BEACH, FLORIDA**

1. The waiver requests to reduce the minimum required stacking distance for parking areas that have more than 51 spaces and to waive the requirement for the installation of a sidewalk along the west side of Depot Road and on both sides of NW 2nd Street have come before the City Commission on April 15, 2008.

2. The Applicant and City staff presented documentary evidence and testimony to the City Commission pertaining to the waiver requests for the Historic Depot Square Project. All of the evidence is a part of the record in this case. Required findings are made in accordance with Subsection I.

I. WAIVERS:

Pursuant to LDR Section 4.6.9(D)(3)(c)(1), the minimum stacking distance for a parking area that has 51 or more parking spaces is 50'. All of the proposed driveways along NW 2nd Street and Depot Road do not provide the minimum required stacking distance. The following table identifies the Applicant's waiver request:

Road	Proposed Stacking Depth	Required Stacking Depth	Requested Stacking Reduction
East driveway south side of NW 2 nd Street	17 feet	50 feet	33 feet
West driveway south side of NW 2 nd Street	20 feet	50 feet	30 feet
West driveway north side of NW 2 nd Street	31 feet	50 feet	19 feet
South driveway along Depot Road	11 feet	50 feet	39 feet
Middle driveway along Depot Road	36 feet	50 feet	14 feet
North driveway along Depot Road	15 feet	50 feet	35 feet
North driveway at roundabout	17 feet	50 feet	33 feet

Pursuant to LDR Section 6.1.3(B), a 5-foot sidewalk is required along both sides of Depot Road and NW 2nd Street. The applicant has requested a waiver from installing a sidewalk along the west side of Depot Road and both sides of NW 2nd Street.

Pursuant to LDR Section 2.4.7(B)(5), prior to granting a waiver, the approving body shall make a finding that the granting of the waiver:

Item A.C. 4/15/08

- (a) Shall not adversely affect the neighboring area;
- (b) Shall not significantly diminish the provision of public facilities;
- (c) Shall not create an unsafe situation; and,
- (d) Does not result in the grant of a special privilege in that the same waiver would be granted under similar circumstances on other property for another applicant or owner.

Would the waiver, as to all of the streets listed above, of Section 4.6.9(D)(3)(c)(1), regarding the reduction of stacking distances comply with the requirements of 2.4.7(B)(5)?

Yes 4 No 0

Would the waiver of Section 6.1.3(B), pertaining to sidewalks, as to the west side of Depot Road and both sides of NW 2nd Street comply with the requirements of 2.4.7(B)(5)?

Yes 4 No 0

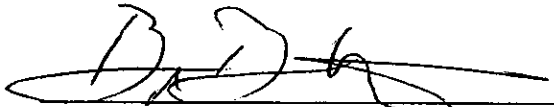
3. The City Commission has applied the Comprehensive Plan and LDR requirements in existence at the time the original development application was submitted and finds that its determinations set forth in this Order are consistent with the Comprehensive Plan.

4. The City Commission finds there is ample and competent substantial evidence to support its findings in the record submitted and adopts the facts contained in the record including but not limited to the staff reports, testimony of experts and other competent witnesses supporting these findings.

5. Based on the entire record before it, the City Commission approves or denies the waiver requests as follows:

LDR Section	Approve	Deny
4.6.9.(D)(3)(c)(1) (stacking distance reduction)	<u> X </u>	<u> </u>
6.1.3(B) (sidewalk requirement)	<u> X </u>	<u> </u>

6. Based on the entire record before it, the City Commission hereby adopts this Order this 15th day of April, 2008, by a vote of 4 in favor and 0 opposed.



 Brenda Montague, Vice-Mayor

ATTEST:

 Chevelle Nubin, City Clerk



 Acting Deputy City Clerk

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

LAST NAME—FIRST NAME—MIDDLE NAME Pliopoulos, Gary P.	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE Delray Beach City Commission
MAILING ADDRESS 05 George Bush Boulevard	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF:
CITY COUNTY Delray Beach, Florida 33444 Palm Beach	<input checked="" type="checkbox"/> CITY <input type="checkbox"/> COUNTY <input type="checkbox"/> OTHER LOCAL AGENCY
DATE ON WHICH VOTE OCCURRED 4-15-2008	NAME OF POLITICAL SUBDIVISION: MY POSITION IS: <input checked="" type="checkbox"/> ELECTIVE <input type="checkbox"/> APPOINTIVE

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies equally to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

Your responsibilities under the law when faced with voting on a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing the reverse side and filing the form.

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office **MUST ABSTAIN** from voting on a measure which inures to his or her special private gain or loss. Each elected or appointed local officer also is prohibited from knowingly voting on a measure which inures to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent organization or subsidiary of a corporate principal by which he or she is retained); to the special private gain or loss of a relative; or the special private gain or loss of a business associate. Commissioners of community redevelopment agencies under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

APPOINTED OFFICERS:

Although you must abstain from voting in the situations described above, you otherwise may participate in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes. (Continued on other side)

Item 10.A.

APPOINTED OFFICERS (continued)

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

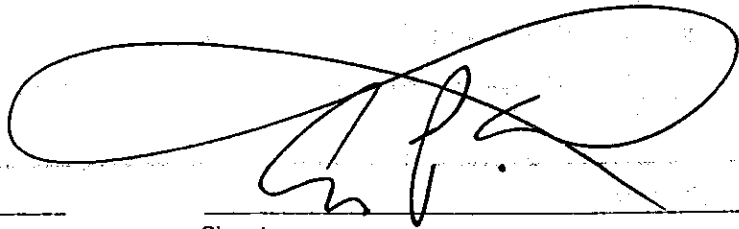
DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, Gary P. Eliopoulos, hereby disclose that on April 15, 2008:

(a) A measure came or will come before my agency which (check one)

- inured to my special private gain or loss;
- inured to the special gain or loss of my business associate, Kupi & Eliopoulos Architects, P.A.;
- inured to the special gain or loss of my relative, _____;
- inured to the special gain or loss of _____, by whom I am retained; or
- inured to the special gain or loss of _____, which is the parent organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:



April 15, 2008
Date Filed

Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.