

FEBRUARY 1, 2011

A Regular Meeting of the City Commission of the City of Delray Beach, Florida, was called to order by Mayor Nelson S. McDuffie in the Commission Chambers at City Hall at 6:00 p.m., Tuesday, February 1, 2011.

1. Roll call showed:

Present - Commissioner Gary P. Eliopoulos
Commissioner Fred B. Fetzer
Commissioner Adam Frankel
Commissioner Angeleta E. Gray
Mayor Nelson S. McDuffie

Absent - None

Also present were - David T. Harden, City Manager
Robert A. Barcinski, Assistant City Manager
Brian Shutt, City Attorney
Chevelle D. Nubin, City Clerk

2. The opening prayer was delivered by Reverend Nancy McCarthy, Delray Beach resident and Priest Associate at St. Gregory's Episcopal Church in Boca Raton.

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

4. **AGENDA APPROVAL.**

Mrs. Gray moved to approve the Agenda, seconded by Mr. Eliopoulos. Upon roll call the Commission voted as follows: Mr. Fetzer – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Eliopoulos – Yes. Said motion passed with a 5 to 0 vote.

5. **APPROVAL OF MINUTES:**

Mr. Frankel moved to approve the Minutes of the Regular Meeting of January 18, 2011, seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes. Said motion passed with a 5 to 0 vote.

6. PROCLAMATIONS:

6.A. Recognizing 2-1-1 Awareness Week – February 11 – 17, 2011

Mayor McDuffie read and presented a proclamation hereby proclaiming the week of February 11, 2011-February 17, 2011 as 2-1-1 Awareness Week. Ms. Patrice Schroeder came forward to accept the proclamation and gave a few brief comments.

6.B. Recognizing Delray Beach American Little League for 40 Years of Service

Mayor McDuffie read and presented a proclamation hereby recognizing and commending Delray Beach American Little League for 40 years of Service to the youth of Delray Beach.

Eddie Odom, Jr. and Yvonne Odom came forward to accept the proclamation and Yvonne Odom thanked the City of Delray Beach and complimented Pompey Park and stated that Commissioner Gray was the first female to play Little League baseball.

Commissioner Gray thanked Mrs. Odom and the Delray Beach American Little League and stated she was indeed the first female to play Little League baseball.

7. PRESENTATIONS:

7.A. Site Plan Review and Appearance Board (SPRAB) Awards

Shane Ames, Chairman of the Site Plan Review and Appearance Board (SPRAB), recognized the following Site Plan Review and Appearance Board (SPRAB) members: Svetlana Simon (Vice Chair), George Brewer (Second Vice Chair), Roger DeCapito (Landscape Contractor), Rustem Kupi (Architect), Scott Porten (Developer), Nick Sadowsky (Portfolio Manager).

At this point, Svetlana Simon, Vice Chair for SPRAB, presented awards to the following 2010 award recipients:

Public Facility - New

West Atlantic Public Plaza

Owner, Delray Beach Community Redevelopment Agency

Architect/Landscaper, Currie Sowards Aguila Architects

Residential - Exterior Renovations

Tropic Bay Condominiums

Property Owner, Tropic Bay Condo Association

Property Manager, Campbell Property Management

CBD - Exterior Renovations

The Office Restaurant

Restaurant Owner, Oven 201 East Atlantic, LLC

Property Owner, Leviathan Land Group, Inc.

Architect, Richard Jones Architecture

Commerical - New

Midtown Medical Building

Owner, Midtown Medical, LLC

Architect, Saltz Michelson Architects

Landscaper, Urban Design Kilday Studios

Mixed-Use - New

Worthing Place

Owner, Granite Worthing LLC

Architects, Cohen Freedman Encinosa & Associates Architects, PA

Landscaper, A. Grant Thornbrough and Associates

Commercial - Exterior Renovations

Wal-Mart Shopping Plaza

Owner, Wal-Mart Stores East, LP

Architect/Landscaper, Kimley-Horn and Associates, Inc.

Recreational Facility - New

Del-Aire Country Club Clubhouse

Owner, Del-Aire Golf Club Inc.

Landscaper, Covelli Design Associates, Inc.

Architect, Currie Sowards Aguila Architects

8. CONSENT AGENDA: City Manager Recommends Approval.

8.A. REQUEST FOR SIDEWALK DEFERRAL AGREEMENT/418 N.W. 14th STREET: Approve a request to defer the installation of a sidewalk along N.W. 14th Street for the property located at 418 N.W. 14th Street.

8.B. AGREEMENT/PALM BEACH COUNTY/AUBURN AVENUE PROJECT: Approve an Agreement with Palm Beach County which provides for reimbursing the City \$1,000,000.00 for the costs associated with the Auburn Avenue project.

8.C. SERVICE AUTHORIZATION NO. 07-17/MATHEWS CONSULTING, INC./AREA 12A RECLAIMED WATER SYSTEM: Approve Service Authorization No. 07-17 to Mathews Consulting, Inc. in the amount of \$179,963.00 for professional engineering services in the design of the Area 12A Reclaimed Water System. Funding is available from 441-5161-536-68.73 (Water and Sewer Fund: Improvements Other/Reclaim Water, Area 12A).

8.D. LANDSCAPE MAINTENANCE AGREEMENT/CROSSWINDS SINGLE FAMILY HOME ASSOCIATION: Approve a Landscape Maintenance Agreement with Crosswinds Single Family Home Association to install eight (8) beds of annuals within the City right-of-way in front of the intersections of Homewood Boulevard and Azalea Court, Begonia Court, Carnation Court and Dracaena Court.

8.E. LANDSCAPE MAINTENANCE AGREEMENT/909 SOUTH OCEAN BOULEVARD: Approve a Landscape Maintenance Agreement with Robert A. Beck II for the installation of new shrubs within the City right-of-way in front of 909 South Ocean Boulevard.

8.F. AMENDMENT NO. 4 TO THE SUB-RECIPIENT HOUSING PARTNERSHIP AGREEMENT/DELRAY BEACH COMMUNITY LAND TRUST, INC.: Approve Amendment No. 4 to the Sub-Recipient Housing Partnership Agreement between the City and the Delray Beach Community Land Trust, Inc. for the purposes of subsidizing the costs associated with affordable housing units within the Community Land Trust.

8.G. ELITE PROTECTION SERVICES AGREEMENT:

Approve renewal of the agreement with Elite Protection Services to provide Advanced Life Support (ALS) Services, on a First Responder basis for Delaire Country Club.

8.H. RESOLUTION NO. 07-11: Approve Resolution 07-11 assessing cost for abatement action required to remove nuisances on three (3) properties throughout the City.

The caption of Resolution No. 07-11 is as follows:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, PURSUANT TO CHAPTER 100 OF THE CODE OF ORDINANCES OF THE CITY OF DELRAY BEACH, ASSESSING COSTS FOR ABATING NUISANCES UPON CERTAIN LAND(S) LOCATED WITHIN THE CITY OF DELRAY BEACH AND PROVIDING THAT A NOTICE OF LIEN SHALL ACCOMPANY THE NOTICE OF ASSESSMENT; SETTING OUT ACTUAL COSTS INCURRED BY THE CITY TO ACCOMPLISH SUCH ABATEMENT AND LEVYING THE COST OF SUCH ABATEMENT OF NUISANCES; PROVIDING FOR AN EFFECTIVE DATE AND FOR A DUE DATE AND INTEREST ON ASSESSMENTS; PROVIDING FOR THE RECORDING OF THIS RESOLUTION, AND DECLARING SAID LEVY TO BE A LIEN UPON THE SUBJECT PROPERTY FOR UNPAID ASSESSMENTS.

(The official copy of Resolution No. 07-11 is on file in the City Clerk's office.)

8.I. FY 2011 PROPOSED PERFORMANCE MEASURES/GOLF COURSES AND TENNIS FACILITIES: Approve proposed performance measures for FY 2011 for the Municipal Golf Course, Lakeview Golf Course, and Tennis Facilities.

8.J. SERVICE AUTHORIZATION NO. 17/SPATIAL FOCUS, INC.: Approve Service Authorization No. 17 with Spatial Focus, Inc. in the amount of \$9,950.00 for technical assistance related to the SunGard Public Safety software project. Funding is available from 334-2111-521-31.90 (General Construction Fund: Professional Services/other Professional Services).

8.K. SPECIAL EVENT REQUEST/14th ANNUAL DOWNTOWN DELRAY CRAFT FESTIVAL: Approve a special event request to endorse the 14th Annual Downtown Delray Craft Festival sponsored by Howard Alan Events, Ltd. to be held May 28 - 29, 2011 from 10:00 a.m. to 5:00 p.m., to grant a temporary use permit per LDR Section 2.4.6(F) for the closure and use of N.W. 3rd Avenue from Atlantic Avenue north to the south side of the entrance to Atlantic Grove townhomes and use of the Tennis

Center parking lot and to provide staff support for traffic control and security, barricading and fire inspection services; contingent upon receipt of 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 January 17, 2011 through January 28, 2011.

8.M. AWARD OF BIDS AND CONTRACTS:

- 1.** Bid award to A & A Associates in the amount of \$35,840.50 for private security services from February 14-28, 2011 for the Champions/World Tour Tennis Tournament. Funding is available from 001-4210-575-55.40 (General Fund: Recreational Supplies/Tennis Tournament).
- 2.** Contract award to Brang Construction, Incorporated, the lowest responsive bidder, in the amount of \$325,900.00 for the construction of twenty-three (23) bus shelters utilizing ARRA grant funds. Funding is available from 101-3163-544-65.70 (ARRA Economic Stimulus: Other Improvements/Transit Stop Bus Shelters).
- 3.** Contract award to Dr. Craig B. Kushinir D.O., in the amount of \$22,000.00 for the position of Medical Director for the Fire Rescue Department. Funding is available from 001-2315-526-31.90 (General Fund: Professional Services/Other Professional Services).
- 4.** Contract awards to Municipal Lighting in the amount of \$44,375.00 for the maintenance and installation of ten (10) decorative street light standards and LED fixtures to replace standards being removed on Atlantic Avenue, due to rust and corrosion. Funding is available from 334-3162-541-46.14 (General Construction Fund: Repair & Maintenance Services/Atlantic Avenue Street Light Replacement).
- 5.** Purchase award to Ferguson Enterprises, Inc. in the amount of \$93,335.56 for piping materials to be installed by the City's construction crew for the S.W. 3rd Street and 6th Avenue Water Main Upgrade. Funding is available from 442-5178-536-68.62 (Water and Sewer Renewal & Replacement Fund: Improvements Other/S.W. 3rd Street & 6th Avenue WM Upgrade).
- 6.** Purchase award to Zoll Medical Corporation in the amount of \$61,645.00 to purchase four (4) Zoll Medical Auto Pulses for the remaining ALS transport units. Funding is available from 334-2311-522-64.90 (General Construction Fund: Machinery/Equipment/Other Machinery/Equipment).

7. Purchase award to CDW Government in the amount of \$64,256.49 for fifteen (15) Panasonic Toughbook computers and related hardware. Funding is available from 334-2311-522-64.11 (General Construction Fund: Machinery/Equipment/Computer Equipment).

Mr. Eliopoulos moved to approve the Consent Agenda as amended, seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. Frankel – Yes. Said motion passed with a 5 to 0 vote.

9. REGULAR AGENDA:

9.A. WAIVER REQUESTS/362 N.E. 3rd AVENUE: Consider approval of two (2) requested waivers to Land Development Regulations (LDR) Section 4.6.9 (D)(3)(b), “Point of Access to the Street System”, to allow 20’ in width where 24’ minimum width is required and to (LDR) Section 4.6.16(H)(3)(d), “New Multiple Family, Commercial, and Industrial Development”, to allow a reduction in the required five foot (5’) landscape strip separating vehicular use areas and adjacent properties for a proposed public parking lot at 362 N.E. 3rd Avenue. (*Quasi-Judicial Hearing*)

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

Chevelle D. Nubin, City Clerk, swore in those individuals who wished to give testimony on this item.

Mayor McDuffie asked the Commission to disclose their ex parte communications. The Commission had no ex parte communications to disclose.

Paul Dorling, AICP, Director of Planning and Zoning, entered the Planning and Zoning Department project file #2011-007 into the record.

Mr. Dorling stated this item is for two waiver requests for a proposed public parking lot at 362 N.E. 3rd Avenue. Mr. Dorling stated the waivers are to allow 20 feet where a 24 foot pavement width is required and to allow landscape buffers in several areas to approximately two feet. He stated this is an existing parking lot that is going to be resurfaced and there is existing landscaping in these areas and the intent is to reduce the number of parking spaces which ultimately can be accommodated; staff is asking for the relief to the internal widths. Also, Mr. Dorling stated there are three areas that there are reductions in five foot landscape strips along the alley. There is some additional dedication area that is required and that will physically reduce the dimensions of the landscaped area; however, there is no intent at this time to actually physically change those landscaped areas so those areas will physically be and continue to be the minimum width. However, Mr. Dorling stated technically because of the dedication areas along the alley they would be reduced from 5 feet to 3.8 feet and there is a 5 foot dedication along 3rd Avenue which would reduce the areas to 3 feet rather than 5 feet. Mr. Dorling stated

there is a sidewalk area to provide access to the handicapped space which then physically reduces this area to two feet rather than 5 feet. Mr. Dorling stated the required findings are made in the staff report.

At its meeting of January 12, 2011, the Site Plan Review and Appearance Board reviewed the two (2) waiver requests in conjunction with the Class V Site Plan approval and recommended approval with a 7 to 0 vote.

Jeff Costello, Assistant Director of the Community Redevelopment Agency (CRA), stated he is present for any questions the Commission may have.

Mayor McDuffie 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.

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. Frankel moved to adopt the Board Order as presented, seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Mayor McDuffie – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes. Said motion passed with a 5 to 0 vote.

9.B. REQUEST FOR AN IN-LIEU OF PARKING SPACE/CAFÉ DE FRANCE: Consider a request from Café De France for the purchase of one (1) in-lieu of parking space in the amount of \$15,600.00 to accommodate an expansion of use. Café de France is located at 110 East Atlantic Avenue. (*Quasi-Judicial Hearing*)

Chevelle D. Nubin, City Clerk, swore in those individuals who wished to give testimony on this item.

Mayor McDuffie asked the Commission to disclose their ex parte communications. The Commission had no ex parte communications to disclose.

Scott Aronson, Parking Management Specialist, stated Café De France is located at 110 East Atlantic Avenue and submitted a Class III site plan modification for the expansion of the restaurant to a vacated portion of an office within the property adjacent to its location. Mr. Aronson stated the 355 square foot expansion will require one parking space per the LDRs. The restaurant requires six (6) spaces per 1,000 square feet for restaurants and per 300 square feet of office space requires one (1) space. Mr. Aronson stated there is an associated project that is going to be with the façade of the building on S.E. 1st Avenue. They will be providing a patio with some dining and so forth which will be reviewed by SPRAB under a separate application and the Community Improvement Department for the sidewalk café license. Mr. Aronson stated LDR Section 4.6.9(E)(3) allows the City Commission to approve a fee in lieu of providing one parking space which the applicant cannot fit on the site. The cost for this space is \$15,600.00 and

will be paid in full upon issuance of a building permit.

Mr. Aronson stated the in lieu parking is consistent with Policy C-4.1 of the land use element which suggests that parking be provided in innovative ways such as that program.

At its meeting of December 28, 2010, the Parking Management Advisory Board recommended approval with a 7 to 1 vote (Mr. Gimmy dissenting and Mr. Morse recusing himself). The Community Redevelopment Agency (CRA) and Downtown Development Authority (DDA) recommended approval.

Mr. Eliopoulos asked how the people are going to be served and will they be going up and down the steps. The applicant briefly explained why he wants the patio. Mr. Eliopoulos stated it can get dangerous with regard to going up and down the stairs to serve people and encouraged the applicant to place the beverage stations on the ground level of the patio in an effort to minimize the circulation.

Mayor McDuffie stated if anyone from the public would like to speak in favor or in opposition of the request for an in-lieu of parking space, to please come forward at this time. There being no one from the public who wished to address the Commission, the public hearing was closed.

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 adopt the Board Order as presented, seconded by Mr. Frankel. Upon roll call the Commission voted as follows: Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes. Said motion passed with a 5 to 0 vote.

9.C. REQUEST TO WAIVE FEES FOR STAFF AND USE OF POMPEY PARK FACILITIES FOR ALL PEOPLE'S DAY® DIVERSITY FESTIVAL:

Consider a request that the City waive facility rental fees and provide staff support at Pompey Park on March 27, 2011 from 9:00 a.m. – 6:00 p.m. for the All People's Day® Diversity Festival.

Linda Karch, Director of Parks and Recreation, stated the background on All People's Day is that this festival is organized for educational and charitable purposes as a community service which is free to the public. Ms. Susan Berkowitz-Schwartz, Founder & Festival Coordinator of All People's Day, is requesting that the fees for use of Pompey Park's facilities and staff support be waived. The festival is scheduled for Sunday, March 27, 2011 from 9:00 a.m. to 6:00 p.m. at Pompey Park. The facility rental fee is \$955.00. All People's Day Diversity Festival had their first event last year where over 300 people attended. Staff recognizes the contribution of this organization, but feels that this might set a precedent for other facility rentals. Therefore, Mrs. Karch stated

staff cannot support this request. Mrs. Karch stated she received a statement from Ms. Berkowitz-Schwartz who requested to have a statement read into the record along with a video she would like the Commission to see. Mrs. Karch read a statement into the record from Ms. Berkowitz-Schwartz and played a two minute video.

Mr. Eliopoulos asked if they paid the fee last year. Mrs. Karch stated they did pay the fee but it was much less. Mr. Eliopoulos stated he would like to see the City be consistent and encourage people to try and raise money for these events.

Mr. Fetzer stated he enjoyed the video and feels this organization already contributes a lot to the community. Mr. Fetzer echoed comments expressed by Commissioner Eliopoulos and he cannot support this from a funding standpoint this year.

Mrs. Gray stated she attended All People's Day last year and supports diversity. However, Mrs. Gray stated she concurs with her fellow Commissioners that we have to set some type of standard because so many non-profit groups come before the Commission asking for support. Mrs. Gray asked how the City determines which events the City is going to support or not support.

The City Manager stated events such as the Garlic Festival or the Asian Festival pay a certain percentage of the cost according to the schedule that the Commission has approved. The City Manager stated they are not using a City facility and the costs that are being waived are really staff costs. Mrs. Gray asked how much staff time would be needed for this event. Mrs. Karch stated this is a Sunday event and it would be the cost of approximately 2-3 staff people. Mrs. Gray stated she does not agree with not charging anything and feels that everyone should pay a little something but maybe the Commission could compromise and do something this year.

Mr. Frankel asked if Mrs. Karch has seen any of their books or bank accounts to see if they have the ability to pay. Mr. Frankel asked if the vendors who are selling food, etc. are paying a fee to participate. Mrs. Karch stated she believes everything is free that day.

Mayor McDuffie inquired about security for the event. Mayor McDuffie stated if someone has one of these events they need to be fundraising all year because the City is not in a position this year to assist with funding. Mayor McDuffie stated he cannot support free events when the City has lost the Delray Beach Historical Society, told the Chamber of Commerce "no", and we are now asking for money from our employees.

Mrs. Gray commented about the request to waive facility fees and staff support and asked if this is City staff. Mrs. Karch stated this is not broken out in the rental agreement; the City will charge for a staff person if the building is closed. Mrs. Karch stated the City charges for the gym, the cafeteria, and the rooms.

Mayor McDuffie asked if the \$955.00 includes staff as well. Mrs. Karch stated by including staff is how they come up with the rental rates. Mrs. Karch stated she believes the security deposit is included in the \$955.00 so some of that money will be refunded.

Mr. Frankel stated he would like to see what the books look like, what the purchases look like, and the money that was brought in last year.

Mr. Fetzer stated staff needs to look at this every year at budget time and set the fee structure.

Mr. Eliopoulos moved to approve the request to waive fees for staff and use of Pompey Park facilities for All People's Day Diversity Festival, seconded by Mr. Frankel. Upon roll call the Commission voted as follows: Mr. Fetzer – No; Mr. Frankel – No; Mrs. Gray – No; Mayor McDuffie – No; Mr. Eliopoulos – No. Said motion was **DENIED** with a 5 to 0 vote.

At this point, the time being 7:03 p.m., the Commission moved to the duly advertised Public Hearings portion of the Agenda.

10. PUBLIC HEARINGS:

10.A. ORDINANCE NO. 01-11: Modification to the Gulf Stream Building SAD (Special Activities District) Ordinance 39-90, to reclassify the uses listed within the ordinance from conditional uses to principal (permitted uses) and to expand the list of uses to add "one residential condominium on the 5th floor with a maximum of 4,925 sq. ft. and a maximum of four bedrooms. The Gulf Stream Building n/k/a HHH Bush Building is located on the north side of George Bush Boulevard east of the Intracoastal Waterway at 1177 George Bush Boulevard.

The caption of Ordinance No. 01-11 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING ORDINANCE NO. 39-90, THE GULF STREAM BUILDING, BY REPEALING SECTION 1 AND ENACTING A NEW SECTION 1 CHANGING THE ALLOWABLE USES FROM CONDITIONAL USES TO PERMITTED USES AND ADDING A NEW USE OF A RESIDENTIAL CONDOMINIUM TO BE LIMITED TO THE FIFTH FLOOR; AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES, SECTION 4.4.25(G), "S.A.D.s," SUBSECTION (6), TO REFERENCE ORDINANCE 01-11; PROVIDING A GENERAL

REPEALER CLAUSE, A SAVING CLAUSE, AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 01-11 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, AICP, Director of Planning and Zoning, stated this is the Gulf Stream building SAD (Special Activities District) located on George Bush Boulevard east of the Intracoastal Waterway. Mr. Dorling stated this is to allow for an additional option of one residential condominium unit on the fifth floor with a maximum of 4,925 square feet and a maximum of four bedrooms. The current option within the building which would apply to all five floors including the top floor does allow commercial and office uses. Mr. Dorling stated this will just be an additional option to convert the fifth floor to a residential unit. The modification also changes the list of uses that are now currently allowed only as conditional uses and applies a permitted use status to them. The building was originally constructed in 1962 and zoned SAD (Special Activities District) in 1984 and modified in 1990 with respect to the specific uses that are allowed in it.

At its meeting of December 20, 2010, the Planning and Zoning Board held a public hearing associated with a request for a modification of the Gulf Stream Building SAD (Special Activities District) and recommended approval with a 6 to 0 vote; at its meeting of January 18, 2011, the City Commission also considered this item and recommended approval.

Mayor McDuffie declared the public hearing open. There being no one from the public who wished to address the Commission regarding Ordinance No. 01-11, the public hearing was closed.

Mr. Eliopoulos stated whoever is working on this might have to comply with the Fair Housing Act because of the elevator and because it is a condo. However, Mr. Eliopoulos stated this does not apply tonight.

Mr. Eliopoulos moved to adopt Ordinance No. 01-11 on Second and FINAL Reading, seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes. Said motion passed with a 5 to 0 vote.

10.B. RESOLUTION NO. 04-11/REVISED CONTRACT FOR SALE AND PURCHASE/3740 LANCEWOOD PLACE: Consider approval of Resolution No. 04-11, a revised contract for sale and purchase, authorizing the City to sell Neighborhood Stabilization Program property located at 3740 Lancewood Place to Lana Ritz for the

amount of \$200,000.00 and provide a subsidy of up to \$40,000.00 secured by a promissory note and second mortgage.

The caption of Resolution No. 04-11 is as follows:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY DELRAY BEACH, FLORIDA, AUTHORIZING THE CITY TO SELL REAL PROPERTY IN PALM BEACH COUNTY, FLORIDA, AS DESCRIBED HEREIN, INCORPORATING AND ACCEPTING THE CONTRACT STATING THE TERMS AND CONDITIONS FOR THE SALE AND PURCHASE BETWEEN THE BUYER AND THE CITY OF DELRAY BEACH, FLORIDA.

(The official copy of Resolution No. 04-11 is on file in the City Clerk's office.)

The City Attorney read the caption of the resolution. 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.

Lula Butler, Director of Community Improvement, stated this item is to approve the sale of a home under the City's Neighborhood Stabilization Program for 3740 Lancewood Place to Lana Ritz for the purchase price of \$200,000.00 and a \$40,000.00 secured promissory note in the form of a second mortgage.

At its meeting of December 14, 2010, the City Commission approved this at a higher cost of \$212,000.00 but the lending bank that has approved the mortgage did a second appraisal and it came in at \$200,000.00. Mrs. Butler stated the City's NSP rules did not allow the City to sell it above the appraised value. Staff requests that the Commission approve the sale of this house at \$200,000.00 and authorize the City to carry a subsidy in the amount of \$40,000.00 secured by a promissory note and second mortgage.

Mayor McDuffie declared the public hearing open. There being no one from the public who wished to address the Commission regarding Resolution No. 04-11, the public hearing was closed.

Mrs. Gray asked where the \$40,000.00 subsidy comes from and how does this work. Mrs. Butler stated it is part of the NSP dollars that the City purchased and the City is allowed to leave a certain amount on as a second mortgage that does not have to be paid back to the City. Mrs. Gray asked if there is a timeframe for the second mortgage. Mrs. Butler stated she believes it is a 20 year second mortgage.

Mr. Frankel moved to approve Resolution No. 04-11 on Second and FINAL Reading, seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. Frankel – Yes. Said motion passed with a 5 to 0 vote.

At this point, the time being 7:11 p.m., the Commission moved to **Item 11, Comments and Inquiries on Non-Agenda Items from the Public.**

11.B. From the Public.

11.B.1. Evelyn S. Dobson, Executive Director of the Delray Beach Community Land Trust (DBCLT) 145 S.W. 12th Avenue, Delray Beach, FL 33444, extended a special thanks to Commissioner Gray, Mr. Tom Carney, Vicki Covington, CRA Commissioner and Nigel Roberts, Neighborhood Services Administrator. Ms. Dobson stated this past Saturday the DBCLT held their first fundraiser at Old School Square and they wanted to demonstrate that they could raise some funds to offset program costs. Ms. Dobson stated following the presentation from the consultant at the CRA's meeting last Thursday he stated that the community wanted someplace to go where they could have fun, dance, and enjoy themselves.

11.B.2. Kristen Puhalainen, Member Services Director, Palm Beach County League of Cities, stated this month's meetings will be in Riviera Beach at their marina complex. Ms. Puhalainen stated one of their youth delegates was appointed to serve on a National League of Cities Committee. She stated in January in Jupiter they had the Inspector General, the Executive Director of the Commission on Ethics, and the State Attorney discussing the new ethics rule and what to expect. Ms. Puhalainen urged the City Commission to keep following them on Facebook, Twitter, and their website.

11.B.3. Pauline Moody, 609 S.W. 8th Avenue, Delray Beach, FL 33444, inquired about the water on the side of S.W. 10th Street and asked if a water main broke.

The City Manager stated that is a raw water main coming from the golf course well field and is a polyethylene pipe installed in the 1980's and it has a leaking joint. The City Manager stated the City has issued an emergency purchase order today to have someone put a line stop in on S.W. 7th Street because we can cut it off on the well side but we are getting backflow from the 20 series well field and we have to stop the water from getting to it so that the City can dry it out and repair it. The City Manager stated the line stop will be put in tomorrow and the repair will take approximately a week or so.

Secondly, Ms. Moody stated she called the Delray Beach Police Department to report people exposing themselves and using the bathroom at 10:00 a.m. on Sunday at the train station. She suggested that the City start enforcing security in this area.

11.B.4. Gladys Whigham, 12299 Pleasant Green Way, Boynton Beach, FL 33437, (speaking on behalf of Palm Beach County Commissioner Priscilla Taylor), commended the City Commission for the great job that they are doing with the youth in Delray Beach specifically the Delray Beach Little League. Ms. Whigham announced that Commissioner Taylor will be hosting a Community Forum on Tuesday, February 8, 2011, from 6:00-8:00 p.m. held at the Southeast Administrative Complex on the second floor.

11.B.5. Dr. Victor Kirson, 2050 Alta Meadows Lane #2110, Delray Beach, FL 33444 (President of the Board of Directors of Tierra Verde at Delray Beach), stated Darin Mellinger, John Ramos, and he will carry the cost for facility rental for the All People's Day Diversity Festival.

12. FIRST READINGS:

A. None

At this point, the time being 7:18 p.m., the Commission moved to **Item 11.A., City Manager's response to prior public comments and inquiries.**

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

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

At this point, the time being 7:19 p.m., the Commission moved back to **Item 9.D. of the Regular Agenda.**

9.D. SPECIAL EVENT REQUEST/VIVA SOUTH FLORIDA: Consider approval of a new event, VIVA South Florida, sponsored by Pegasus Entertainment to be held on September 9-10, 2011 from 12:00 noon to 11:00 p.m., and September 11, 2011 from 12:00 noon to 8:00 p.m., to grant a temporary use permit per LDR Section 2.4.6(F) for use of the City rights-of-way to include N.E. 1st Avenue from Atlantic north to the garage entrance and Swinton from Atlantic to approximately N.E. 1st Avenue, to authorize staff support for traffic control and security, site cleanup and trash removal, electrician assistance, barricading assistance, event signage, EMS assistance, trash boxes and use of a City generator; contingent upon meeting the conditions listed in the staff report.

Robert A. Barcinski, Assistant City Manager, stated this item is for the Commission to approve a new event called "VIVA South Florida" produced by Pegasus Entertainment proposed to be held on the grounds of Old School Square and Old School Square Park on September 9-10, 2011 from noon to 11:00 p.m., and September 11, 2011 from noon to 8:00 p.m. The Commission is also requested to approve staff support for traffic control and security, EMS services, site cleanup and trash removal, electrician assistance, barricading assistance, event signage, for the use of City rights-of-way to include N.E. 1st Avenue from Atlantic north to the garage entrance and Swinton from

Atlantic to approximately N.E. 1st Street. This is a Latin American Festival designed to be a kickoff event for Hispanic Heritage Month. The West Palm Beach Hispanic Chamber of Commerce is supporting this event. The estimated overtime costs is \$25,600.00, trash boxes \$400.00, signage \$250.00 for a total of \$26,250.00. The event producer is required to pay 100% of City costs. Staff recommends a change in the site plan to move fencing to Swinton further south so as not to block access to the homeowner just south of DaDa's. Staff recommends approval for the "VIVA South Florida" event subject to the eleven (11) conditions listed on page 2 of the memo with the addition of condition #12 which is the general requirement for Certificate of Event Liability Insurance, Alcohol Liability Insurance, and Hold Harmless Agreement which is required by August 27, 2011. Mr. Barcinski stated this event will be held in September and since this is one of the City's slower month's staff hopes this will bring some economic activity to the downtown.

Mr. Frankel expressed concern that this event is right in the middle of hurricane season.

Randy Carrillo, CEO Pegasus Entertainment, stated they have liability insurance and weather insurance for that particular time of the season. Mr. Carrillo stated it is at a time when they have the kick-off of the Hispanic Heritage Month that goes through October and they wanted to be the first in front of all the other activities that are going to be taking place in Broward/Dade County as well as Palm Beach County.

Mr. Fetzer asked Mr. Carrillo if he is agreeable to all the conditions.

Mrs. Gray thanked Mr. Carrillo for selecting the City of Delray Beach to hold this event. She inquired about the facility rental fee. Mr. Barcinski stated they will have to pay Old School Square and have that agreement signed to pay their deposit as well as our part. Mr. Barcinski stated \$5,341.20 will be paid to the City for the park rental and the amount they will pay Old School Square is \$14,515.00.

At this point, Mr. Carrillo stated if approval is considered he would like to thank the City Commission for giving them the opportunity to present their event in Delray Beach. Mr. Carrillo introduced his partner Russ Morley, COO, Sponsorship Director Annette Larsen, and Andre Varona representing the Hispanic Palm Beach County, Inc. Chamber of Commerce.

Mr. Fetzer moved to approve the Special Event Request for the "VIVA South Florida" event proposed to be held on September 9-11, 2011 subject to the twelve (12) conditions as outlined by staff, seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Mayor McDuffie – Yes; Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes. Said motion passed with a 5 to 0 vote.

9.E. SPECIAL EVENT REQUEST/ASIAN FOOD FAIR AND CULTURAL SHOW: Consider approval of a special event request to allow the 8th Annual Asian Food Fair and Cultural Show sponsored by the Bangladesh Association of

Florida, to be held on March 19-20, 2011 from 12:00 noon until 10:00 p.m. on the grounds of Old School Square and in the Old School Square Park; to grant a temporary use permit per LDR Section 2.4.6(F) for the closure and use of a portion of N.E. 1st Avenue, to authorize staff support for traffic control and security, site cleanup and trash removal, EMS assistance, standard event signage and assistance with banner hanging; use of the Old School Square Garage, North City Hall Parking lot, City generator if needed and three generator lights; and to waive to the Event Policies and Procedures to allow more than two (2) major events in March; contingent upon meeting the conditions listed in the staff report.

Robert A. Barcinski, Assistant City Manager, stated this item is for Commission to approve the 8th Asian Food Fair and Cultural Show being held in Delray Beach sponsored by the Bangladesh Association of Florida, which is proposed to be held on March 19-20, 2011 on the grounds of Old School Square and in the Old School Square Park from noon to 10:00 p.m. The Commission requested to grant the temporary use permit for the closure and use of and a portion of N.E. 1st Avenue, to authorize staff support for traffic control and security, site cleanup and trash removal, EMS assistance, regular event signage and assistance with banner hanging. The event sponsor also requested per the event permit the use of the CRA lot, Old School Square Garage, County Garage, North City Hall lot, 200 reserved parking spaces in the Old School Garage for vendors, VIP's and sponsors, City generator, four (4) light towers, trash boxes and an event sign on I-95. Mr. Barcinski stated staff is also requesting a waiver to the Event Policies and Procedures to allow the third major event in a month. The site would be fenced and there will be an admission charge of \$10.00 for adults and children under 6 years old are free. Mr. Barcinski stated the City will be charging in the garage lot and staff recommends no more than 70 permits versus 200 reserved parking spaces requested by the event sponsor. The estimated staff overtime is \$13,100.00, trash boxes \$350.00, signage \$250.00 and light tower \$400.00 for a total of \$14,100.00. Per the Event Policies and Procedures, the event producer will be required to pay 75% of overtime and 100% of other costs for an estimated total of \$10,825.00. Staff recommends approval of the waiver to allow the third event in a month with the conditions as listed in the memo. Mr. Barcinski stated they will also pay Old School Square a rental fee of \$6,975.00 and the park rental fee is \$1,240.00.

Mr. Frankel moved to approve the Special Event Request to allow the 8th Annual Asian Food Fair and Cultural Show to be held on March 19-20, 2011, subject to the conditions seconded by Mr. Eliopoulos. Upon roll call the Commission voted as follows: Mr. Eliopoulos – Yes; Mr. Fetzer – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes. Said motion passed with a 5 to 0 vote.

9.F. RESOLUTION NO. 06-11: Consider approval of Resolution No. 06-11 amending Resolution No. 01-11 to allow for cancellation of the special election regarding Commission terms if it is determined that there will not be a contested election for a commission seat.

The caption of Resolution No. 06-11 is as follows:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING RESOLUTION 01-11 IN ORDER TO CLARIFY THAT A SPECIAL ELECTION REGARDING THE CHARTER CHANGE SET FORTH IN ORDINANCE 40-10 SHALL ONLY BE HELD ON MARCH 8, 2011 IF THERE IS A NEED TO HOLD A REGULAR ELECTION FOR A CITY COMMISSION SEAT.

(The official copy of Resolution No. 06-11 is on file in the City Clerk's office.)

The City Attorney stated Resolution No. 06-11 amends Resolution 01-11 adopted January 4, 2011 calling for the Special Election regarding the Charter Amendment to change the maximum number of terms from three to two and increasing the term for a Commissioner from two years to three years. The City Attorney stated based on the discussion held at the last City Commission meeting this resolution is before the Commission to amend Resolution 01-11 in the event that it is determined that there will not need to be held an election for Commission seat on the March election date and that the Commission would go ahead and contact the Supervisor of Elections office to request removal of the City's proposed ballot language that the City Commission has previously approved.

Mr. Frankel asked if there is any provision of when this would be moved to. The City Attorney stated he did not want to repeal Ordinance No. 40-10 and the Commission would have to take some action on that after the Commission approves this tonight. After February 8, 2011, if there is no election, then staff will have to come back before the Commission with Ordinance No. 40-10 and seek direction whether or not the Commission wants to repeal that ordinance or move that ordinance to another election cycle (i.e. March 2012). Mr. Frankel stated the whole purpose to do this is to save money and if there is no election for the Mayor or the Commission seats it seems the opposite of the Commission's goal. Mr. Frankel stated he is in favor of it and feels it should be put on a ballot but expressed concern that to hold an election for just one issue knowing that turnout will be a lighter would be irresponsible.

Mrs. Gray stated by putting this on the ballot would save money if we move forward and would save an election every other year if it is approved. Mrs. Gray stated last year's election was a 6% turnout and the year before that there was a 12% turnout with three seats open.

The City Attorney stated if this is approved and then by February 8, 2011 at noon no one else qualifies and we recognize that we do not need an election, then the next meeting in February or the first meeting in March staff would come back before the Commission seeking direction regarding Ordinance No. 40-10 with alternatives to see what the direction the Commission would like staff to take on that ordinance.

Mayor McDuffie stated there is not a 2011 General Election in November so the next chance it could go back on the ballot would be the City Election in March 2012.

Mr. Fetzer stated he concurs with comments expressed by Commissioner Frankel and feels this would be irresponsible of the Commission to put this as a single issue on the ballot. Mr. Fetzer stated he is in favor of this resolution.

Mr. Eliopoulos stated he supports this resolution.

Mayor McDuffie stated he too supports this resolution.

Mr. Fetzer moved to approve Resolution No. 06-11, seconded by Mr. Eliopoulos. Upon roll call the Commission voted as follows: Mr. Fetzer – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Eliopoulos – Yes. Said motion passed with a 5 to 0 vote.

At this point, the time being 7:36 p.m., 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 he was able to go Monday to hear Senator Haridopolos who discussed unfunded mandates that they might repeal to give cities more flexibility and they also discussed TABOR (Taxpayer's Bill of Rights). The City Manager stated Senator Haridopolos stated as far as he is concerned TABOR for local governments is dead and they are going to try and get something put on the ballot at the State level. The City Manager stated he expressed his concern to Senator Haridopolos that if we had this at the State level the State will just push more things down to us because they are not adequately funding the court system or the prosecutors, and over the last ten years they have shifted more and more of the costs of schools to the local level. He stated another concern that was discussed at the City Manager's meeting was that would be the foot in the door and if they adopted it at the State level we would be next. The City Manager reiterated that there was a good amount of discussion about various mandates and pensions and trying to get more flexibility in Chapter 175 and 185 and he forwarded some of the latest information from Jim Linn to the Commission today.

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 stated the voters of Palm Beach County approved the Inspector General process for the Ethics Commission and feels things get passed sometimes with not everyone being fully educated on what we are really buying into and he expressed concern over the cost of this.

Secondly, Mr. Fetzer commented about the emails regarding the valet parking fees and the City Engineer's response about the resident that complained about gouging and how the valets are charging exorbitant costs for valet parking. He stated staff is going to look and see if the City has legal authority to restrict those fees and would be in favor of looking hard at that because that kind of perception is not good for the downtown.

Lastly, Mr. Fetzer stated there are still noise issues with Deck 84. He stated this is a great restaurant but they have to live harmoniously with the residential areas around them and the City has to continue to work on a solution.

13.C.2. Mr. Eliopoulos

Mr. Eliopoulos formally thanked Commissioner Fetzer for arranging for the Spady Museum and stated he coordinated with AT&T a project this year involving the planting of trees and benches for Spady and the turnout was good.

Secondly, Mr. Eliopoulos commented about "Laugh with the Library" held at the Delray Beach Library over the weekend and stated it was a well received turnout for the library fundraiser.

Mr. Eliopoulos commented about the Roundtable Meeting and stated he wished more people had attended. Mr. Eliopoulos stated he liked the clickers because it allowed the public to become more engaged in the meeting. In addition, Mr. Eliopoulos stated having the Roundtable Meeting at the gym was the way to go.

Mr. Eliopoulos commented about the gouging of valet parking fees.

Lastly, Mr. Eliopoulos stated he and Commissioner Gray attended the Community Redevelopment Agency (CRA) meeting Thursday night and commented about the request for the Pompey Park press box. Mr. Eliopoulos briefly discussed the separate baseball leagues (American League and National League) and that the CRA Board was appalled that there appears to be segregation with the baseball leagues.

Mayor McDuffie stated the offer was made at the end of previous negotiations to kill the Delray National Charter and charter the whole thing under the Delray Beach American League.

The City Manager stated the Delray National League is an integrated league.

13.C.3. **Mrs. Gray**

Mrs. Gray stated she too attended the CRA meeting and feels some of the comments were disturbing and suggested that the City explore hiring a R.A.C.E. Relations expert to address this. Mrs. Gray stated race also came up with the soccer complex and she briefly discussed the emails going back and forth regarding the soccer complex and found it disturbing because it all pointed to XPE Sports and Prep & Sports as actually being the bad guy. Mrs. Gray stated the Delray Beach Athletic Club does not have a contract or insurance with the City of Delray Beach and asked why the City allowed soccer and lacrosse to be played on the fields without any type of insurance. Mrs. Gray stated Prep & Sports signed an agreement with the City that they had to have insurance and feels everyone needs to have insurance and this issue needs to be looked into this as soon as possible.

Secondly, Mrs. Gray stated she attended the Church of the Palms over the weekend and she enjoyed their service.

Mrs. Gray stated Prep & Sports is having their 1st Annual Fundraiser Super Bowl party on Sunday, February 6, 2011.

She stated Atlantic Community High School had a symposium last week where they had all of the teachers, parents, and Dr. Akbar to speak to the audience about why African-American males are not graduating. Mrs. Gray stated this is not the School Board's fault but it is actually a combination of many things and mainly the parents fault. She stated there are going to be a lot of issues that are going to be coming up in our city concerning that as well.

Lastly, Mrs. Gray stated the Delray Beach Community Land Trust (DBCLT) Fundraiser Event was awesome.

13.C.4. **Mr. Frankel**

Mr. Frankel stated he also attended "Laugh with the Library" at the Delray Beach Library and the attendance was great and the comedy show was well done.

Secondly, Mr. Frankel stated he went to dinner at the Atlantic Ocean Club and the owner informed him that they just hired over 100 people.

Lastly, Mr. Frankel stated the presentations at the Roundtable Meeting were very good; however, the attendance was poor. He concurred with comments expressed by Commissioner Eliopoulos that this does not work and he does not understand why the City had the Roundtable Meeting at the same time the Chamber of Commerce was holding an event. Mr. Frankel suggested that this be an afternoon event where some of the homeowners groups might participate and that the Roundtable be tweaked.

13.C.5. **Mayor McDuffie**

Mayor McDuffie concurred that the turnout is disappointing and there is a lot of work that goes into speech preparation, etc. He stated there was a lady who attended this year's Roundtable Meeting as well as last year's who is a professional events planner and offered to volunteer to work on next year's Roundtable Meeting to help get the attendance up.

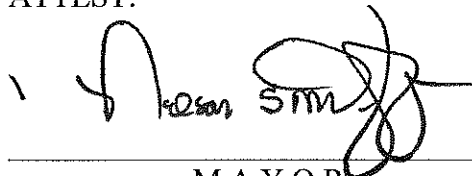
Secondly, Mayor McDuffie stated he missed most of the events the rest of the Commission attended because he left at noon to go out of town.

There being no further business, Mayor McDuffie declared the meeting adjourned at 7:56 p.m.



City Clerk

ATTEST:



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 February 1, 2011, which Minutes were formally approved and adopted by the City Commission on February 15, 2011.



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.

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

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

WAIVER REQUESTS FOR 362 NE 3RD AVENUE

1. This waiver request to allow a reduction to the minimum pavement width and a reduction of the landscape buffer came before the City Commission on February 1, 2011.

2. The Applicant and City staff presented documentary evidence and testimony to the City Commission pertaining to the waiver request to allow a reduction to the minimum pavement width and a reduction of the landscape buffer. All of the evidence is a part of the record in this case. Required findings are made in accordance with Subsection I.

I. WAIVER:

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:

- (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.

A. Waiver to Allow a Reduction to the 24' Minimum Pavement Width:

The applicant has requested a waiver to Land Development Regulation (LDR) Section 4.6.9(D)(3)(b) to allow 20' pavement width where 24' minimum pavement width is required for parking aisles and driveway access points. The following verbatim justification has been provided:

"While the required drive aisle width is 24', the existing parking lot is currently nonconforming with regard to the drive aisle widths which vary between 22.3' and 23.4'. It is noted where the drive aisle width is 22.3' in width, a landscape island exists opposite the back-out spaces, thus eliminating any potential conflicts. For the balance of the site in order to increase the drive aisle widths

by 1' would result in the elimination of existing mature trees and parking spaces."

Does the waiver request meet the requirements of Section 2.4.7(B)(5)?

Yes No

B. Waiver to Allow a Reduction to the 5' Landscape Buffer:

The applicant has requested a waiver to Land Development Regulation (LDR) Section 4.6.16(H)(3)(d) to allow a reduction in the required five foot (5') landscape strip separating vehicular use areas and adjacent properties. The following verbatim justification has been provided:

"The landscape barrier provided along the south property line exceeds this requirement by approximately two (2) feet with the exception of the easternmost portion where the landscape strip is reduced to two feet (2') to accommodate a 38' x 5' walk for the handicap accessible parking spaces required for the site. A 2' wide landscape barrier has been provided adjacent to this walk. Also, due to the 2' dedication of alley on the west side of the property, the request is to reduce the 5' landscape strip to 3.8'. As a result of the 5' dedication of right-of-way for NE 3rd Avenue, the request is to reduce the landscape strip from 5' to 3'. In both right-of-way dedication situations, the width of the landscape area will remain as existing and the mature trees along 3rd Avenue will be retained. The City has no intentions of utilizing the 5' dedicated right-of-way along NE 3rd Avenue at this time. However, the 5' dedication area will be available in the future, if the site is redeveloped and the parking lot eliminated."

Does the waiver request meet the requirements of Section 2.4.7(B)(5)?

Yes No

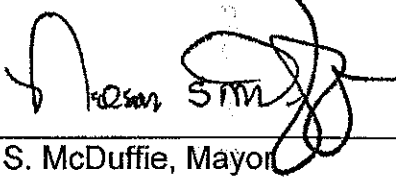
3. The City Commission has applied the Comprehensive Plan and LDR requirements in existence at the time the original development application was submitted and finds that its determinations set forth in this Order are consistent with the Comprehensive Plan.

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 ✓ denies the waiver request to LDR Sections 4.6.9(D)(3)(b) and 4.6.16(H)(3)(d).

6. Based on the entire record before it, the City Commission hereby adopts this Order this 1st day of February, 2011, by a vote of 5 in favor and 0 opposed.



Nelson S. McDuffie, Mayor

ATTEST:



Chevelle Nubin, City Clerk



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

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

IN LIEU PARKING FEE REQUEST FOR CAFÉ DE FRANCE

1. This in lieu parking fee request for the purchase of 1 parking space in-lieu has come before the City Commission on February 1, 2011.

2. The Applicant and City staff presented documentary evidence and testimony to the City Commission pertaining to the in lieu parking fee request for Café De France. All of the evidence is a part of the record in this case. Required findings are made in accordance with Subsection I.

I. IN LIEU PARKING FEE:

Pursuant to LDR Section 4.6.9(E)(3), when additional parking is required due to expansions of use to an existing building and it is impossible or inappropriate to provide such parking the City Commission may approve the payment of an in lieu fee rather than provide the required parking. In the case of expansions of use, no existing parking spaces may be eliminated.

Does the In Lieu Parking Fee request for the purchase of 1 parking space in-lieu meet the requirements of LDR Section 4.6.9(E)(3) and the conditions, if any, listed below?

At \$15,600 per space totaling \$15,600.00. Payment is due upon issuance of a building permit.

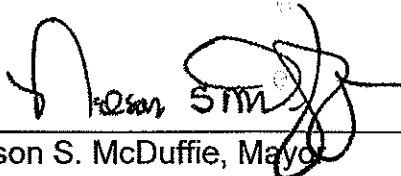
Yes No

3. The City Commission hereby finds that the In Lieu Parking Fee Request meets the requirements of 4.6.9(E)(3) of the Land Development Regulations, with the conditions listed above, if any, and the City Commission has applied the Comprehensive Plan and finds that its determinations set forth in this Order are consistent with the Comprehensive Plan and Land Development Regulations.

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 ✓ denies the in lieu parking fee request as set forth above.

6. Based on the entire record before it, the City Commission hereby adopts this Order this 1st day of February, 2011, by a vote of 5 in favor and 0 opposed.



Nelson S. McDuffie, Mayor

ATTEST:


Chevelle Nubin, City Clerk