

NOVEMBER 15, 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, November 15, 2011.

1. Roll call showed:

Present - Commissioner Tom Carney
Commissioner Jay Alperin
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 Rabbi Greg Kanter with Temple Sinai.

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

4. **AGENDA APPROVAL.**

Mayor McDuffie stated **Item 9.B., Consideration of an Appeal/Historic Preservation Board's Decision/Class III Site Plan Modification** and **Item 9.B.1., Consideration of an Appeal of the Historic Preservation Board's Decision on a Waiver Request**, are being postponed at the request of the applicant.

Dr. Alperin moved to approve the Agenda as amended, seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Dr. Alperin – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – 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 November 1, 2011, seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes; Dr. Alperin – Yes. Said motion passed with a 5 to 0 vote.

6. PROCLAMATIONS:

6.A. America Recycles Day – November 15, 2011

Mayor McDuffie read and presented a proclamation hereby proclaiming November 15, 2011 as America Recycles Day in the City of Delray Beach. Jennifer Buce, Litter Prevention Coordinator and Rich Reade, Sustainability Officer came forward to accept the proclamation and gave a few brief comments.

6.B. St. Paul African Methodist Episcopal Church 114th Anniversary

Mayor McDuffie read and presented a proclamation hereby recognizing St. Paul African Methodist Episcopal Church on its 114 Anniversary in the City of Delray Beach. Pastor LaTanya Floyd came forward to accept the proclamation and gave a few brief comments.

7. PRESENTATIONS:

7.A. Florida Association of City Clerks (FACC) Second Vice President – Lori McWilliams presentation to City Clerk, Chevelle D. Nubin

Lori McWilliams, Village Clerk Tequesta, congratulated Chevelle D. Nubin, with her Master Municipal Clerk (MMC) designation and presented her with an MMC pen and her certification plaque. Ms. McWilliams stated Ms. Nubin embarked on this journey approximately seven (7) years ago after receiving her Certified Municipal Clerk (CMC) designation and this has provided her with the tools necessary to improve the efficiency and effectiveness of our local municipal governments. Ms. McWilliams stated during her voyage Ms. Nubin has served as the Palm Beach County Municipal Clerks Association President and now serves as the Southeast District Director for the Florida Association of City Clerks. Ms. McWilliams stated it is her hope that she will consider a future run for the Presidency of the State Association.

Chevelle D. Nubin, MMC, came forward to accept her MMC pen and certification plaque and thanked the City Manager for allowing her to continue to pursue her education. Ms. Nubin also thanked Doug Smith, Assistant City Manager and stated he wrote a sponsorship letter when she became Southeast District Director to be able to have that time out of the office to go and serve other cities. Ms. Nubin stated Clerks are trained on a wide range of topics as far as governmental accounting, ethics, communication, how to build a relationship with local reporters, and how to interact with elected officials. Ms. Nubin thanked the Department Heads and the great bosses that she has had with Lula Butler being her first boss and mentor. Ms. Nubin stated she is thankful for the people she serves on a day-to-day basis and is grateful for the City Clerk staff for giving her tremendous support.

8. CONSENT AGENDA: City Manager Recommends Approval.

8.A. RESOLUTION NO. 53-11: ABANDONMENT OF UTILITY EASEMENT; MIDTOWN DELRAY: Approve Resolution No. 53-11 to abandon a 12' wide utility easement located within the plat for Midtown Delray property (formerly Blood's Grove Orchard) for a water main formerly serving the Hammock Reserve development to the south.

The caption of Resolution No. 53-11 is as follows:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, VACATING AND ABANDONING A UTILITY EASEMENT DEDICATED BY AN EASEMENT DEED RECORDED IN O.R.B. 9764, PAGE 1355, AS MORE FULLY DESCRIBED IN EXHIBIT "A".

(The official copy of Resolution No. 53-11 is on file in the City Clerk's office.)

8.B. CHANGE ORDER NO. 2/FOSTER MARINE CONTRACTORS, INC.: Approve Change Order No. 2 to Foster Marine Contractors, Inc. in the amount of \$13,647.50 for an adjustment in contract quantities due to roadway slope adjustment to facilitate drainage; and overbuild to an existing asphalt driveway to match the new sidewalk grade; and a contract time extension of seven (7) days; for the S.W. 12th Avenue/Auburn/S.W. 14th Avenue Project. Funding is available from 448-5461-538-68.04 (Storm Water Utility Fund: Other Improvement/S.W. 12th Avenue/Auburn/S.W. 14th Avenue).

8.C. CONTRACT CLOSEOUT (CHANGE ORDER NO. 3/FINAL)/BRANG CONSTRUCTION, INC.: Approve a Contract Closeout (C.O. No. 3/Final) with Brang Construction, Inc. in the amount of an \$18,556.10 decrease and final payment in the amount of \$62,142.20; which includes \$18,123.08 for additional asphalt overlay required to complete the Martin Luther King Jr. Drive Beautification Project. Funding is available from 380-4150-572-63.28 (2004 G.O. Bond: Improvements Other/Pompey Park/Community Center), 334-4141-572-68.57 (General Construction Fund: Other Improvement/Cultural Loop/MLK Drive Phase 1) and 441-5181-536-65.96 (Water and Sewer Fund: Other Improvements/Reclaimed Water Transmission).

8.D. TRI-PARTY AGREEMENT: FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT)/CSX TRANSPORTATION, INC. (CSXT)/CITY OF DELRAY BEACH: Approve a Tri-Party Agreement between the Florida Department of Transportation, CSX Transportation, Inc. (CSXT) and the City of Delray Beach in the amount of \$203,633.00 to reimburse CSXT for reconstruction of the S.W. 10th Street railroad crossing. Funding is available from 334-3162-541-46.90 (General Construction Fund: Repair & Maintenance Services/Other Repair/Maintenance Costs).

8.E. IMPLEMENTATION OF A VALET PARKING SERVICE IN THE OLD SCHOOL SQUARE GARAGE: Approve implementation of a valet parking service in the Old School Square Parking Garage.

8.F. HOUSING REHABILITATION GRANT/CONTRACT AWARD: Re-award one (1) Housing Rehabilitation contract in the amount of \$28,839.31 for 316 N.W. 6th Avenue through the Community Development Block Grant (CDBG) and Residential Construction Mitigation Program (RCMP) to Built Solid Construction the second lowest responsive bidder, due to the low bidder's withdrawal request. Funding is available from 118-1963-554-49.19 (Neighborhood Services: Other Current Charges/Housing Rehabilitation) and 118-1936-554-49.19 (Neighborhood Services: Other Current Charges/Housing Rehabilitation).

8.G. LANDSCAPE MAINTENANCE AGREEMENT/921 SOUTH OCEAN BOULEVARD, LLC: Approve Landscape Maintenance Agreement with 921 South Ocean Boulevard, LLC to provide for the installation of new shrubs and groundcovers within the unpaved right-of-way in front of the property located at 921 South Ocean Boulevard.

8.H. LICENSE AGREEMENT/ZGS DELRAY, LLC.: Approve a License Agreement with ZGS Delray, LLC. for use of public parking spaces adjacent to N.E. 3rd Avenue for a limited period of time.

8.I. REQUEST TO INSTALL BUS SHELTER ART/PUBLIC ART ADVISORY BOARD: Approve a request to install art work in three (3) bus shelters located at: 1) Carver Middle School at the intersection of Barwick and West Atlantic; 2) N.E. 1st Street in the 200 Block and 3) Linton Boulevard just east of Military Trail on the south side. Funding is available from 115-1702-579-31.90 (Special Projects Fund (Public Art): Professional Services/Other Professional Services).

8.J. VOTE PROCESSING EQUIPMENT USE AND ELECTIONS SERVICES AGREEMENT: Approve a Vote Processing Equipment Use and Election Services Agreement between the Palm Beach County Supervisor of Elections and the City for conducting municipal elections.

8.K. RESOLUTION NO. 52-11: Approve Resolution No. 52-11 assessing costs for abatement action required to remove nuisances on twelve (12) properties throughout the City of Delray Beach.

The caption of Resolution No. 52-11 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. 52-11 is on file in the City Clerk's office.)

8.L. SPECIAL EVENT REQUEST/14TH ANNUAL FIRST NIGHT 2012: Approve a special event request to endorse the 14th Annual First Night 2012 event on December 31, 2011 from 4:00 p.m. to midnight, grant a temporary use permit per LDR Section 2.4.6(F) for the use of City rights-of-way and facilities as requested, and authorize generator use and staff support for traffic control and security, site cleanup and trash removal, barricade set up and removal, banner hanging, signage construction and installation, and EMS services.

8.M. SPECIAL EVENT REQUEST/SAVOR THE AVENUE: Approve and endorse Savor the Avenue, sponsored by Boca Raton and Delray Beach Magazine and supported by the Downtown Development Authority, to be held on March 29, 2012 from 5:30 p.m. to 8:30 p.m.; grant a temporary use permit per LDR Section 2.4.6(F) for closure and use of Atlantic Avenue from Swinton to the west side of NE/SE 5th Avenue from 2 p.m. until 10:00 p.m.; and authorize staff support for traffic control and security, EMS assistance, Fire inspection, barricading, trash boxes, use of a City-owned portable generator and banner hanging with banners to be hung no sooner than 14 days prior to the event; contingent upon receipt of a certificate of event and alcohol liability insurance and an executed hold harmless agreement by March 15, 2012.

8.N. REVIEW OF APPEALABLE LAND DEVELOPMENT BOARD ACTIONS: Accept the actions and decisions made by the Land Development Boards for the period October 31, 2011 through November 11, 2011.

8.O. AWARD OF BIDS AND CONTRACTS:

- 1.** Contract award to Murray Logan Construction, Inc. in the amount of \$16,992.00 for proposed drainage work on Lewis Cove. Funding is available from 448-5461-538-46.90 (Storm Water Utility Fund: Repair and Maintenance Service/Other Repair/Maintenance Cost).
- 2.** Purchase award to Intercounty Engineering, Inc. in the amount of \$50,000.00 for the Sanitary Sewer Manhole Rehabilitation

Program. Funding is available from 442-5178-536-63.82 (Water & Sewer Renewal & Replacement Fund: Improvements Other/Sanitary Sewer MH Rehab).

- 3.** Purchase award to PVS Technologies, Inc. in the amount of \$259,000.00 for purchase and delivery of liquid ferric chloride "as needed". Funding is available from 441-5122-536-52.21 (Water and Sewer Fund: Operating Supplies/Chemicals).

Mr. Frankel 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. Carney – Yes; Dr. Alperin – Yes; Mr. Frankel – Yes. Said motion passed with a 5 to 0 vote.

9. REGULAR AGENDA:

9.A. PROPOSAL/DELRAY BEACH PRESERVATION TRUST/CENTENNIAL TIME CAPSULE: Consider approval of a proposal from the Delray Beach Preservation Trust to install a 100-Year Time Capsule in the City Hall lobby in recognition of the Delray Beach Centennial.

The City Manager stated this is a proposal from the Delray Beach Preservation Trust to install a 100-Year Time Capsule in the City Hall lobby area in recognition of the Delray and staff would like permission from the City Commission to do that.

Dr. Alperin moved to approve the proposal from the Delray Beach Preservation Trust to install a 100-Year Time Capsule in the City Hall lobby in recognition of the Delray Beach Centennial, seconded by Mr. Frankel. Upon roll call the Commission voted as follows: Mayor McDuffie – Yes; Mr. Carney – Yes; Dr. Alperin – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes. Said motion passed with a 5 to 0 vote.

9.B. THIS ITEM HAS BEEN POSTPONED DUE TO THE REQUEST OF THE APPLICANT.

9.B.1. THIS ITEM HAS BEEN POSTPONED DUE TO THE REQUEST OF THE APPLICANT.

9.C. SPECIAL EVENT REQUEST/FASHION ON THE AVENUE: Consider approval of a special event request for Fashion on the Avenue, sponsored by Luxe Partners, Inc. and supported by the Downtown Development Authority, to be held on January 26, 2012, from 8:00 p.m. to 9:30 p.m.; granting of a temporary use permit per LDR Section 2.4.6(F) for closure and use of Atlantic Avenue from Swinton to the west side of N.E./S.E. 5th Avenue from 4:00 p.m. until 11:00 p.m. and use of the Hands lot for crew and models; and authorization of staff support for traffic control and security, barricading, use of a City-owned portable generator

and banner hanging; contingent upon receipt of a certificate of liability insurance and an executed hold harmless agreement by January 12, 2012.

Robert A. Barcinski, Assistant City Manager, stated the Commission has been requested to consider approval of a Special Event permit for Fashion on the Avenue proposed to be held January 26, 2012 from 8:00-9:30 p.m. sponsored by Luxe Partners, Inc. and supported by the Downtown Development Authority (DDA). Mr. Barcinski stated staff also requests that the Commission approve a temporary use permit for the closure of Atlantic Avenue from Swinton Avenue to the east side of NE/SE 5th Avenue from 4:00 p.m. until 11:00 p.m., use of the Hand's lot for crew and models and to provide staff assistance for traffic control and security, barricading, banner hanging and use of a portable generator. The estimated overtime cost for this event is \$3,050.00 and barricade rental is \$150.00 for a total cost of \$3,200.00. The event producer is responsible for paying 100% of all City costs per Special Event Policies and Procedures. Staff recommends approval contingent upon the receipt of a Certificate of Liability Insurance by January 12, 2012 as well as a Hold Harmless Agreement by January 12, 2012.

Dr. Alperin inquired about how many closings of the Avenue the Commission was going to allow per year. Mr. Barcinski stated the City used to allow eight maximum and then changes were made to the policies and procedures. Mr. Barcinski stated there are only so many major events at the tennis center that you can have in a month; you cannot have an intermediate event on top of a major event. Mr. Barcinski stated it limits the City on the intermediate events to two a week. He stated the City may have to start looking at limits and the only free months are June, July, August, and September to some degree.

Dr. Alperin asked if the overtime costs are calculated accurately. Mr. Barcinski stated each employee calculates their base time times overtime plus the fringe benefit requirement and they all figure in the multiplier with the exact overtime based on who works. Mr. Barcinski stated each department sends a report at the end of the event to his office; they audit and verify and then send it down to the Finance Department for the billing to the event producer. Mr. Barcinski stated this is to help the retail.

Marjorie Ferrer, Executive Director of the Downtown Development Authority, stated the retailers are very excited about this event and introduced the following individual who is a new merchant in Pineapple Grove Way.

Loren Malice (sp?), stated she came to Delray Beach by way of Connecticut and then New York where for 18 years she was the Director of Special Events and Communications under Governor Patacki for the Economic Development Office, where she produced such events such as Fashion Week.

Mr. Frankel moved to approve the Special Event Request for Fashion on the Avenue to be held on January 26, 2012 from 8:00 p.m. to 9:30 p.m., seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Mr. Carney – Yes; Dr.

Alperin – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes. Said motion passed with a 5 to 0 vote.

9.D. APPOINTMENT TO THE GREEN IMPLEMENTATION ADVANCEMENT BOARD: Appoint one (1) regular member to the Green Implementation Advancement Board to serve an unexpired term ending July 31, 2012. Based upon the rotation system, the appointment will be made by Commissioner Gray (Seat# 4).

Mrs. Gray moved to appoint Isabelle Alarie as a regular member to the Green Implementation Advancement Board to serve an unexpired term ending July 31, 2012, seconded by Mr. Carney. Upon roll call the Commission voted as follows: Dr. Alperin – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes. Said motion passed with a 5 to 0 vote.

9.E. APPOINTMENT TO THE EDUCATION BOARD: Appoint one (1) regular member to the Education Board to serve an unexpired term ending July 31, 2012. Based upon the rotation system, the appointment will be made by Commissioner Gray (Seat #4).

Mrs. Gray moved to appoint Angela Burns as a regular member to the Education Board to serve an unexpired term ending July 31, 2012, seconded by Mr. Frankel. Upon roll call the Commission voted as follows: Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes; Dr. Alperin – Yes. Said motion passed with a 5 to 0 vote.

At this point, the time being 6:28 p.m., the Commission moved to **Item 11, City Manager's response to Prior Public Comments and Inquiries from the City Manager and the Public.**

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

The City Manager stated at the last meeting Ms. Jolene McClure the owner of Off the Avenue expressed safety concerns regarding persons loitering, drinking, and potential drug use and sales in the area of Starbucks Coffee Shop at S.E. 5th Avenue and Atlantic Avenue. He stated Assistant Chief Goldman met with Mr. Knoblock at "Off the Avenue" and also communicated with Ms. McClure via telephone. The City Manager stated thus far the Police Department has conducted numerous extra patrols in the area and increased the presence of Clean and Safe Officers. Additionally, Community Patrol has increased their activity in the area and spot cars have been deployed. Assistant Chief Goldman and Captain Mitchell met with the Starbucks property owner and manager to get buy-in from the community partners and explore C.P.T.E.D (Crime Prevention Through Environmental Design) opportunities. The City Manager stated some of the issues that were addressed were the flower pot that was outside Starbucks and was used as a place to stand and smoke. The flower pot belongs to the CRA and will be removed in the coming days. A bicycle rack will take its place and

should take up some space in the area so the crowds will not be able to congregate there. In addition, the City Manager stated there is a small alleyway between Starbucks and "Off the Avenue" that is being used for various inappropriate activities and in the coming days the Police Department will get with essential personnel and have the area approved for a fence to stop this type of behavior. The Police Department is also in the process of obtaining "No Trespassing Signs" for the area to enforce the subjects who are not patrons and malingering around the business during non-business hours. During their conversations, staff was made aware of another issue at Big Al's Steak restaurant with the use of that bathroom and this is also being addressed. The initial review of Ms. McClure's complaint was solidified that there are quality of life matters in the immediate area that warrant the City's attention. The City Manager stated in reference to calls for services at Off the Avenue the Police Department is showing seven calls from Off the Avenue since July. The Police Department is addressing the lack of presence issue; however, last month Clean and Safe Officers conducted over 350 extra patrols in the Clean and Safe area and also had 32 man hours on the bicycle and 20 man hours on the T3. Also, the City Manager stated the owners of the Hartman House were concerned about issues around that establishment. On November 9, 2011, Assistant Chief Goldman and Jennifer Costello attended a community meeting at the Hartman House and the topics of discussion were crime in the area, crime prevention, and transitional housing. The meeting was filled with questions and Assistant Chief Goldman advised that it went well and he received a follow-up email from Ms. Goldstein thanking him for his time and comments. The next step will be to have Sergeant Nicole Guerriero provide crime prevention tips to the neighborhood. The Police Department will work on increasing both volunteer and police patrols in the area. Ms. Costello is working with other city members and coordinating another meeting to address concerns on housing and code issues.

Secondly, the City Manager stated regarding skateboarding comments that were brought up by Vice Mayor Gray it should be noted that the Police Department has increased patrols and have spoken to some subjects who frequent the area. The City Manager stated officers will continue to monitor and address issues as they arise.

The City Manager stated Dr. Kirson had expressed concerns about response times and staff looked at average response times in October compared to June. In June, the average response time for priority one calls was five minutes and 34 seconds; in October it was 4 minutes and 55 seconds; unit reaction time which is the time from the first dispatch to first arrival in June was 3 minutes 18 seconds and October was 3 minutes 16 seconds. The City Manager stated the call that Ms. McClure was concerned about was classified as a priority 3 call and the average response time in October for priority 3 calls was 23 minutes and 29 seconds. He stated from April through October the average response time for a class 3 call was 22 minutes and 26 seconds. The calls are held in dispatch until someone is free and the unit reaction time from the time of the first dispatch to first arrival over a three month period was 5 minutes and 13 seconds. He stated if officers are busy on other things then priority 3 calls fall to the bottom of the list.

Lastly, the City Manager stated at the last meeting Mr. Cottone made some comments about the fees for various Parks and Recreation programs. The City

Manager stated Mr. Cottone is a member of the Financial Review Board and the Board has been pressing the City to recover a larger part of the cost for such programs. Therefore, the City Manager stated his comments and the previous comments from the Board are in opposition to each other. The City Manager stated the Board needs to decide what they want the City to do unless Mr. Cottone is speaking solely for himself and not really to the Board.

11.B. From the Public.

11.B.1. Mike Malone, 64 S.E. 5th Avenue, Delray Beach, FL 33444, thanked the City Manager and staff for the quick response to what he just reported on for those areas in downtown Delray Beach.

11.B.2. Gladys Whigham, speaking on behalf of Palm Beach County Commissioner Priscilla Taylor, congratulated Chevelle Nubin on this prestigious achievement that she has accomplished in regards to obtaining her MMC.

11.B.3. Dr. Victor Kirson, D.D.S., 2050 Alta Meadows Lane #2110, Delray Beach, FL 33444 (President of the Board of Directors of Tierra Verde at Delray Beach and Member of the Alliance), thanked the City Manager for the accurate statistics. He stated he attended the Hartman House and there was about 30-35 residents. Dr. Kirson stated he was astounded by the fact that a lot of them have been robbed. Dr. Kirson stated Assistant Chief Goldman went over the facts. The members of the halfway houses the drug addicts and drug dealers apparently have a lot of rights and we cannot violate their rights. Dr. Kirson suggested that we may want to bust in, catch them with the drugs, and send them to jail. Dr. Kirson stated if a drug addict is picked up with an illegal substance and arrested, by the time he gets to the County, the charge has dropped to drug paraphernalia and by the time the hearing is supposed to happen it has dropped completely. Dr. Kirson stated if they pick up a drug dealer it does not matter what happens because in two hours they will have another drug dealer at that gas station on the corner. He stated the Police Department does everything they can but they are behind the eight ball. Dr. Kirson stated about eight years ago Hazleton, Pennsylvania dealt with the problem and arrested everyone from the ship that unloaded the drugs down to the mothers that were selling the drugs and by getting the whole chain they were able to solve the problem. Dr. Kirson asked what this would take for Delray Beach to do something like this. He stated if we get rid of the drugs the halfway houses will disappear in Delray Beach.

Mayor McDuffie stated the State Attorney's Office has Quarterly Advisory Council Meetings and there are a nominal amount of people in attendance. Mayor McDuffie stated at the City level many things have been done to try to curb the issues that we have with sober houses and have also gone to Washington, D.C. with sober house issues and pill mill issues. Mayor McDuffie stated he also met with Sheriff Bradshaw on those issues as well. Mayor McDuffie encouraged everyone to contact the Palm Beach County State Delegation and with the Congressional Delegation and let them know what is going on.

11.B.4. **Christina Morrison, 2809 Florida Boulevard #207, Delray Beach, FL 33483,** stated the Economic Council is working on a new resolution to close the loophole on internet sales tax.

Ms. Morrison stated they have finished their initial process of the 6 pillars in Palm Beach County. She stated the vision of the Economic Council and the Florida Chamber is the year 2030. Ms. Morrison stated by the year 2030 they want to be a State with high paying jobs, a State with global competitiveness, and a State of vibrant communities all like Delray Beach. Ms. Morrison stated the 6 pillars are talent, supply, and education, innovation and economic development, quality of life in quality places, infrastructure and growth leadership, civic and governance, and business climate and competitiveness. She stated starting at the city level they are looking to create new leaders to carry us forward to the new economic sense of the future.

At this point, the time being 6:47 p.m, the Commission moved to **Item 12, First Readings.**

12. **FIRST READINGS:**

12.A. **ORDINANCE NO. 43-11:** Consider amending Ordinance No. 70-89 which revises Section 1, "Designation", and Section 2, "Requirements of Designation" of Ordinance 70-89, and an amendment to Land Development Regulations (LDR) Section 4.5.1(K)(2), "Designation of Historic Sites", to provide for a revised legal description of the Fontaine Fox Designation. If passed, a public hearing will be held on December 6, 2011.

The caption of Ordinance No. 43-11 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING ORDINANCE NO. 70-89 THAT PROVIDED FOR THE HISTORIC DESIGNATION OF THE FONTAINE FOX HOUSE AND PROPERTY; AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES OF THE CITY OF DELRAY BEACH, FLORIDA, BY AMENDING ARTICLE 4.5, "OVERLAY AND ENVIRONMENTAL MANAGEMENT DISTRICTS", SECTION 4.5.1, "HISTORIC PRESERVATION SITES AND DISTRICTS", SUBSECTION (K), "DESIGNATION OF HISTORIC SITES", PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 43-11 is on file in the City Clerk's office.)

The City Attorney read the caption of the ordinance.

Paul Dorling, AICP, Director of Planning and Zoning, stated this ordinance amends the legal description and development restrictions contained in Ordinance 70-89. Mr. Dorling stated this is the current Fontaine Fox designation. The new plat will reconfigure the size of Lot 3, and shift the existing north fifty feet (50') onto Lots 1 and 2 of Ocean Apple Estates, Plat II are not locally designated parcels, the historic designation of their new southern fifty feet (50') will not be removed, and the overall boundary of the Fontaine Fox House designation will not be altered.

At its meeting of November 2, 2011, the Historic Preservation Board (HPB) recommended approval with a 6 to 0 vote.

Dr. Alperin moved to approve Ordinance No. 43-11 on FIRST Reading, seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes; Dr. Alperin – Yes. Said motion passed with a 5 to 0 vote.

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 he mentioned about what the Police Department is doing at the S.W. 5th Avenue Park and they also plan to install a standard “No Skateboarding” sign there. The City Manager stated when he was in Fort Collins he saw something that the City is going to use in some of the downtown area. He stated it is actually painted onto the sidewalk and is a sign that says “Dismounts On” with a picture of a bicycle and a skateboard with a circle with a line through it. The City Manager stated people do not realize that they are not supposed to skateboard or bicycle on the sidewalks downtown.

Secondly, the City Manager stated regarding the signs for the parking garage the City has the two large very visible monument signs at the intersection of N.W. 1st Street and 2nd Avenue and on N.E. 1st Street and N.E. 1st Avenue at the Old School Square garage entrance. The City has contacted Palm Beach County seeking permission to install directional signage on the traffic signal cables at Swinton Avenue and Atlantic Avenue and Swinton Avenue and N.E. 1st Street. The County denied a request to a limited capacity of the cables and poles to support the additional weight of the signage. The City Manager stated the only remaining option is to install additional street signage strategically located along primary routes into the downtown area. The City will identify those locations and install appropriate signage for both the Old School Square and Federspiel garages.

The City Manager stated he previously sent out by email the fees the City has received from the in-lieu program in each zone. He stated prior to the garages opening, the City sold 121 spaces. The Federspiel garage opened in June 2007 and since then we have sold 82 spaces for a total of 203 spaces altogether that we have sold.

The City Manager stated with regard to a concern about drainage issues being created by new construction, the required submittals have been largely limited to calculations verifying in compliance with water quality parameters. The Master Drainage Plan established design criteria in three categories: (1) new subdivisions west of I-95, (2) new subdivisions east of I-95, and (3) within existing built up areas or infill development. The City Manager stated some of the criteria has changed since the Master Plan was developed specifically related to minimum finished floor elevations in the eastern area of the city particularly on the barrier island. As a result, we have had some flooding issues. The City Manager stated there are suggestive modifications to design criteria. Off-site discharge requirements based on "pre" versus "post" construction calculations requiring on-site retention of the difference and some criteria on site grading no net decrease in the existing watershed surface storage volume where the average finish site grade exceeds 12 inches above the centerline of the existing roadway. The City plans to schedule some design criteria meetings for local developers, builders, engineers, planners and architects to get their input to possible changes in the land development regulations to deal with that issue.

13.B. **City Attorney**

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

13.C. **City Commission**

13.C.1. **Dr. Alperin**

Dr. Alperin asked for the total number of spaces in the two garages. The City Manager stated Old School Square is over 500. Mayor McDuffie stated there are a little over 700 spaces. Dr. Alperin stated we have sold about 200 so it is a significant amount that people are paying back for the garage investment. Dr. Alperin inquired about the additional dome lights being up and stated the garage is much better lit than it was before.

Secondly, Dr. Alperin stated he attended a CRA meeting last week and was disturbed by a vote they had to delay a decision they had already made with an agreement with the Chamber of Commerce. He stated the CRA backed out of their vote and reneged on an agreement.

13.C.2. **Mrs. Gray**

Mrs. Gray stated she attended the National League of Cities Conference in Phoenix, Arizona last week and it was a great conference focusing on economic development.

Secondly, Mrs. Gray stated the CRA will be hosting a meeting tonight at 5:30 at the Delray Beach Public Library concerning the West Atlantic Avenue proposed hotel.

Lastly, Mrs. Gray stated Congressman Hastings' office asked her to sit on their Military Academy Interview Committee and she will be interviewing 11 young adults for the West Point Academy.

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

Mr. Frankel stated he attended the Chris Evert Event over the weekend with Deputy Vice Mayor Tom Carney. The event raised \$800,000.00 which is \$100,000.00 more than last year. Mr. Frankel stated this event is great for the charities but it is also great for the city.

Secondly, Mr. Frankel stated on November 11, 2011 there were eight weddings on the beach.

At this point, the time being 7:00 p.m., the Commission moved to the duly advertised Public Hearings portion of the Agenda.

10. **PUBLIC HEARINGS:**

10.A. **RESOLUTION NO. 49-11:** Consider approval of Resolution No. 49-11 allowing for a fire assessment fee, if adopted, to be collected for a portion of fiscal year 2012, and to be placed on the property tax bill for the fiscal year beginning October 1, 2012.

The caption of Resolution No. 49-11 is as follows:

A RESOLUTION OF THE CITY OF DELRAY BEACH, FLORIDA ELECTING TO USE THE UNIFORM METHOD OF COLLECTING NON-AD VALOREM ASSESSMENTS LEVIED WITHIN THE INCORPORATED AREA OF THE CITY STARTING FISCAL YEAR 2013 AND COLLECTING NON-AD VALOREM ASSESSMENT FOR A PORTION OF FISCAL YEAR 2012 UNDER FLORIDA STATUTE SECTION 170.201; STATING A NEED FOR SUCH LEVY; PROVIDING FOR THE MAILING OF THIS RESOLUTION; AND PROVIDING FOR AN

EFFECTIVE DATE.

(The official copy of Resolution No. 49-11 is on file in the City Clerk's office.)

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.

The City Attorney stated at the last Workshop meeting the Commission gave staff direction to proceed with a fire assessment fee and under Florida State Statute 197.3632 the City Commission will need to adopt this resolution so we can place this starting for the 2013 fiscal year on the non-ad valorem assessment roll of the tax roll for Palm Beach County.

The City Manager stated the resolution authorizes the assessment for the current fiscal year.

Mayor McDuffie declared the public hearing open.

Christina Morrison, 2809 Florida Boulevard #207, Delray Beach, FL 33483, stated approximately six months ago this was first talked about as a means of gathering some kind of taxation from the smaller properties in town that were not paying any taxes or very low taxes (i.e. condos, small homes). Ms. Morrison stated those homes that were not paying any real estate taxes also would be paying the smallest amount of the fire assessment. Ms. Morrison stated the fire assessment as was presented last week wants to tax industrial and light industrial properties at the same rate as other commercial properties. She stated one of her investors Park Ten they pay over \$300,000.00 in tax bills. Ms. Morrison stated if this goes through for an industrial property it would add an additional \$15,000.00 in tax dollars needed to keep running the business park. She stated industrial properties have suffered greatly over the last few years because they cater to contractors, suppliers and distributors that have been hard hit by the recession. Ms. Morrison stated they have significant vacancies paying huge real estate taxes and now the City wants to hit them with another tax. She stated she had some research done today and found that West Palm Beach for industrial and light industrial charges one cent per square foot; Lake Worth proposes to charge two cent a square foot; Boynton Beach is five and no one in Boca knew if there is a tax on the industrial properties. Ms. Morrison urged the Commission to reconsider the tax for industrial parks which do not carry the big value that a restaurant or store does.

Mrs. Gray suggested that we consider the information provided by Ms. Morrison. The City Manager stated the rates are not being set this evening but just establishing the legal basis to do it in the future.

Mr. Carney commented about the comparison survey as related to the average residential assessment. He stated he would have like to have seen that same survey as it related to not only light industrial but also commercial.

Brief discussion followed by the Commission.

The City Manager suggested that the Commission have a Special Work session on either November 29, 2011 or November 30, 2011. Mr. Frankel stated the Commission has a 5:00 p.m. Water Management Meeting on Tuesday, November 29, 2011 so if the Commission decides to have a Work session it would have to be at 6:30 p.m.

It was the consensus of the Commission to have a special meeting.

There being no one else from the public who wished to address the Commission regarding Resolution No. 49-11, the public hearing was closed.

Mr. Frankel moved to approve Resolution No. 49-11, seconded by Dr. Alperin. Upon roll call the Commission voted as follows: Mayor McDuffie – Yes; Mr. Carney – Yes; Dr. Alperin – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes. Said motion passed with a 5 to 0 vote.

10.B. ORDINANCE NO. 37-11: Consider a city initiated amendment to the Land Development Regulations (LDR) Section 4.5.3, “Flood Damage Control Districts”, Subsection (D), “Construction Standards”, to modify the section while maintaining compliance with State Statutes.

The caption of Ordinance No. 37-11 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES, BY AMENDING SECTION 4.5.3, “FLOOD DAMAGE CONTROL DISTRICTS”, SUBSECTION (D) “CONSTRUCTION STANDARDS”, TO MODIFY THE SECTION WHILE MAINTAINING COMPLIANCE WITH STATE STATUTES; PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 37-11 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 on January 11, 2011, Ordinance No. 02-11 was adopted by the City Commission to amend the Flood

Damage Control Districts regulations. Mr. Dorling stated one of the major components of that was to require the lowest floor elevation be raised twelve (12") inches. Mr. Dorling stated with new construction that has created some issues particularly with some of the in-fill issues we have in town. He stated staff was under the understanding that those were mandatory changes and it has been brought to staff's attention that those were not mandatory and that they were optional. Mr. Dorling stated staff is removing the language to lower it twelve (12") inches and relieve some of the issues.

At its meeting of September 19, 2011, the Planning and Zoning Board reviewed this item and recommended approval; at its meeting of November 1, 2011, the City Commission recommended approval on first reading.

Mayor McDuffie declared the public hearing open. There being no one from the public who wished to address the Commission regarding Ordinance No. 37-11, the public hearing was closed.

Mr. Carney moved to approve Ordinance No. 37-11, seconded by Dr. Alperin. Upon roll call the Commission voted as follows: Mr. Carney – Yes; Dr. Alperin – Yes; Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes. Said motion passed with a 5 to 0 vote.

10.C. **ORDINANCE NO. 40-11:** Consider a city initiated amendment to the Land Development Regulations (LDR) Section 4.6.9(E)(3), "In-Lieu Fee", to clarify that the maximum percentage of in-lieu spaces applies only to new developments and the expansion of existing developments.

The caption of Ordinance No. 40-11 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES, BY AMENDING SECTION 4.6.9, "OFF-STREET PARKING REGULATIONS", SUBSECTION (E), "LOCATION OF PARKING SPACES", PARAGRAPH (3), "IN-LIEU FEE"; TO CLARIFY THE APPLICABILITY OF THE MAXIMUM PERCENTAGE OF IN-LIEU PARKING SPACES PERMITTED; PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 40-11 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 will clarify that the 30% maximum percentage of in-lieu spaces applies only to new development and expansions of existing developments. Mr. Dorling stated when the Commission adopted Ordinance No. 21-11 it applied to 30% maximum based upon some recommendations from the City's Parking Management Plan. That Plan was not specific with respect to the various options that it should apply to and after that adoption it became clear that the application should not apply to conversions of existing space as with most of those the 30% maximum would have been exceeded.

At its meeting of October 10, 2011, the Downtown Development Authority (DDA) considered this ordinance and recommended approval; the West Atlantic Redevelopment Coalition (WARC) reviewed this item and recommended approval; at its meeting of October 13, 2011, the Community Redevelopment Agency (CRA) reviewed the item and recommended approval; at its meeting of October 25, 2011, the Parking Management Advisory Board (PMAB) reviewed the item and recommended approval; at its meeting of October 17, 2011, the Planning and Zoning Board reviewed the item and recommended approval with a 7 to 0 vote.

Mayor McDuffie declared the public hearing open. There being no one from the public who wished to address the Commission regarding Ordinance No. 40-11, the public hearing was closed.

Mr. Frankel stated he was not in favor of Ordinance No. 21-11 and it passed on a 4 to 1 vote (Commissioner Frankel dissenting).

Mrs. Gray moved to approve Ordinance No. 40-11 on Second and FINAL Reading, seconded by Mr. Carney. Upon roll call the Commission voted as follows: Dr. Alperin – Yes; Mr. Frankel – No; Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes. Said motion passed with a 4 to 1 vote, Commissioner Frankel dissenting.

10.D. **ORDINANCE NO. 41-11:** Consider a city initiated amendment to the Land Development Regulations (LDR) Section 2.4.6(F), "Temporary Use Permit", to clarify the approval authority for uses under a tent.

The caption of Ordinance No. 41-11 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF
THE CITY OF DELRAY BEACH, FLORIDA,
AMENDING THE LAND DEVELOPMENT
REGULATIONS, BY AMENDING SECTION 2.4.6,
"PROCEDURES FOR OBTAINING PERMITS AND
APPROVALS", SUBSECTION (F), "TEMPORARY USE

PERMIT”, TO CLARIFY THAT THE CHIEF BUILDING OFFICIAL MAY GRANT PERMISSION FOR TEMPORARY USES, PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 41-11 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 will clarify the approval authority for uses under a tent. Mr. Dorling stated currently the LDRs identify that certain uses are allowed under temporary tents and to be approved by the City Commission. These uses include sale of seasonal items (i.e. Christmas trees and the like). Retail sales and commercial uses under a tent are prohibited and this ordinance adds the Chief Building Official as a granting authority to approve temporary uses for tents including seasonal items. Mr. Dorling stated this ordinance further identifies that uses for assembly purposes are now limited to a maximum of seven (7) days. This ordinance would allow a request for that type of use up to three (3) days to be done by the Chief Building Official and between three (3) and seven (7) days by City Commission and again prohibits further requests over seven (7) days.

At its meeting of October 17, 2011, the Planning and Zoning Board reviewed the item and recommended approval with a 7 to 0 vote. At its meeting of November 1, 2011, the City Commission recommended approval at that time.

Mayor McDuffie declared the public hearing open. There being no one from the public who wished to address the Commission regarding Ordinance No. 41-11, the public hearing was closed.

Dr. Alperin moved to approve Ordinance No. 41-11, seconded by Mrs. Gray. Upon roll call the Commission voted as follows: Mr. Frankel – Yes; Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney- Yes; Dr. Alperin – Yes. Said motion passed with a 5 to 0 vote.

10.E. ORDINANCE NO. 42-11: Consider an amendment to Chapter 33, “Police and Fire-Rescue Departments”, Section 33.64, “Contributions”, Subsection (A), “Member Contributions”, to increase employee contributions by 3% for police officers in compliance with the new terms of our Collective Bargaining Agreement.

The caption of Ordinance No. 42-11 is as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING CHAPTER 33, "POLICE AND FIRE-RESCUE DEPARTMENTS", SECTION 33.61, MEMBERSHIP; CONDITIONS OF ELIGIBILITY; APPLICATION", SUBSECTION (B), "APPLICATION", TO MODIFY MEMBER CONTRIBUTIONS; SECTION, 33.64, "CONTRIBUTIONS", SUBSECTION (A), "MEMBER CONTRIBUTIONS", TO MODIFY MEMBER CONTRIBUTIONS FOR POLICE OFFICERS; PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

(The official copy of Ordinance No. 42-11 is on file in the City Clerk's office.)

The City Attorney read the caption of the ordinance and stated this ordinance amends the City's pension ordinance and makes it comport to the ratification of the collective bargaining agreement with the officers and sergeants. 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.

Mayor McDuffie declared the public hearing open. There being no one from the public who wished to address the Commission, the public hearing was closed.

Dr. Alperin moved to approve Ordinance No. 42-11, seconded by Mr. Frankel. Upon roll call the Commission voted as follows: Mrs. Gray – Yes; Mayor McDuffie – Yes; Mr. Carney – Yes; Dr. Alperin – Yes; Mr. Frankel – Yes. Said motion passed with a 5 to 0 vote.

At this point, the time being 7:27 p.m., the Commission moved back to
Item 13.

13.C.4. **Mr. Carney**

Mr. Carney had no comments or inquiries on non-agenda items.

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

Mayor McDuffie stated he had the opportunity to attend the Del-Aire Ribbon Cutting Ceremony for their new clubhouse which is 100,000 square feet.

Secondly, Mayor McDuffie stated the Digital Divide Program is moving ahead and Commissioner Abrams is the Chair of the Palm Beach Broadband. Mayor McDuffie stated he has been in communication with Commissioner Abrams and

Commissioner Taylor to see what else we can do. Mayor McDuffie stated he has also been negotiating with a Foundation and if the City meets their criteria, we may receive a grant of \$50,000.00 from them. He stated a Tri-Party Agreement is being worked on.

Lastly, Mayor McDuffie stated he just got back from Ohio.

There being no further business, Mayor McDuffie declared the meeting adjourned at 7:33 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 November 15, 2011, which Minutes were formally approved and adopted by the City Commission on December 6, 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.

